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41st PARLIAMENT

Current and Emerging Issues

FOREWORD

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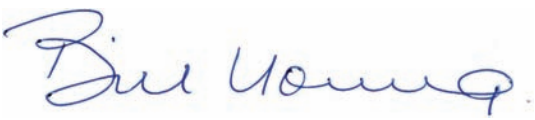
We look forward to serving you during the 41st Parliament!



William R. Young
Parliamentary Librarian

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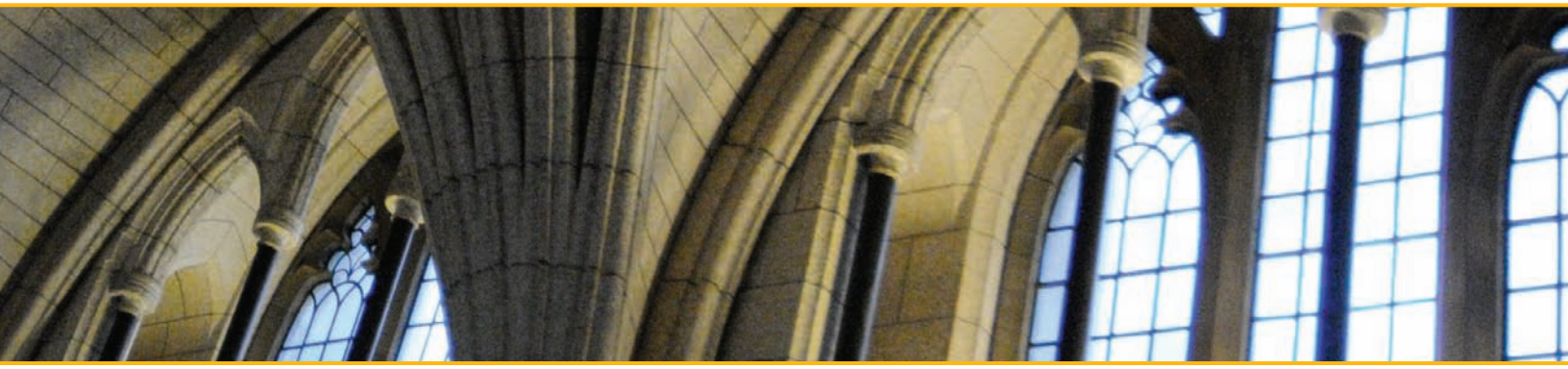

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This publication illustrates the type of concise, non-partisan analysis our research staff can offer. The articles it contains are a small sample of the more in-depth information and research products and services that our information and research professionals provide regularly to parliamentary clients.

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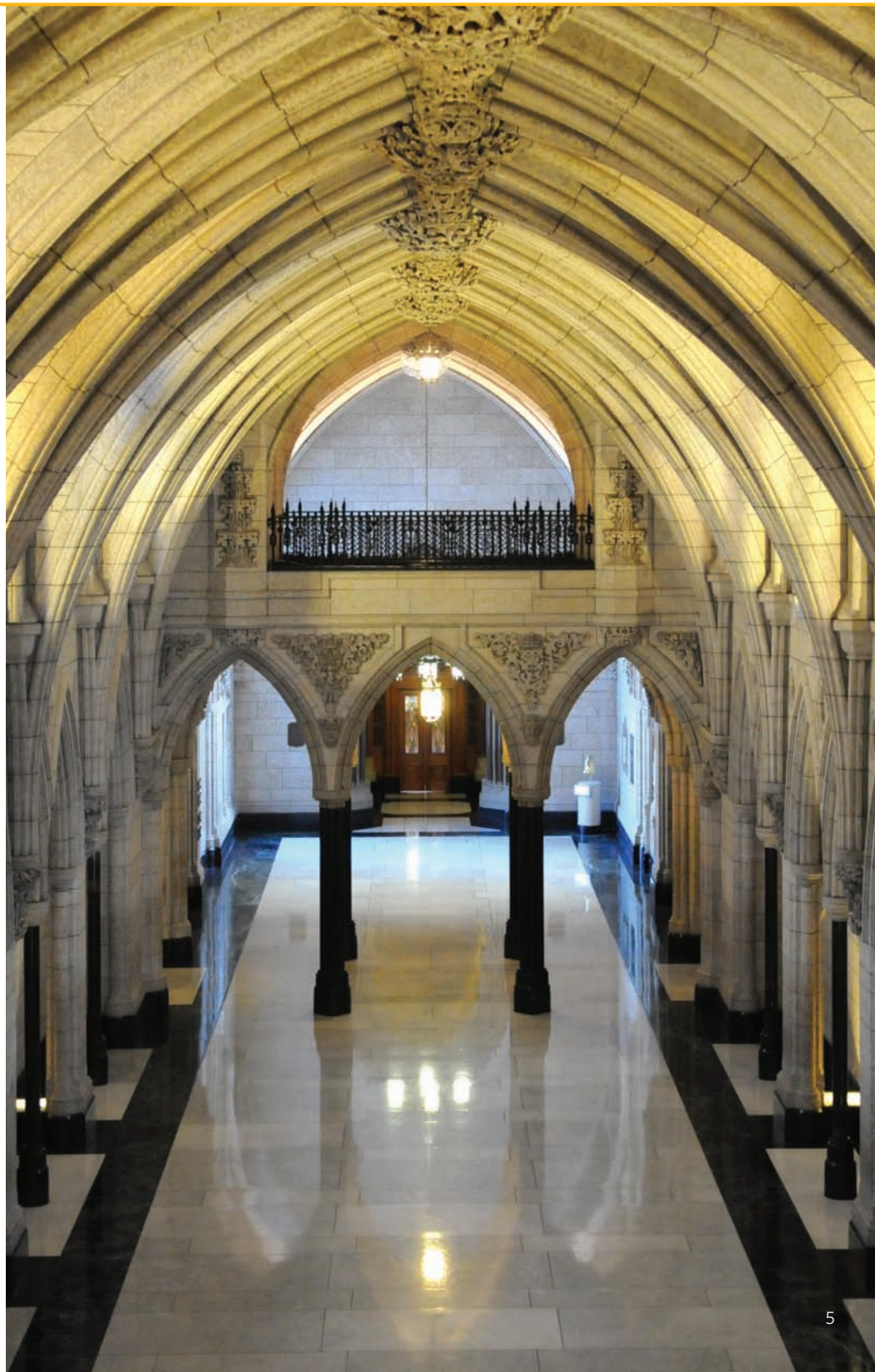

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41st PARLIAMENT

Current and Emerging Issues

THE USE OF GOVERNOR GENERAL SPECIAL WARRANTS DURING AN ELECTION PERIOD

Alex Smith

ISSUE | In the absence of Parliament's adoption of an appropriation bill, how is the federal government's spending authorized during an election?

SYNOPSIS | The federal government used Governor General special warrants to authorize its spending following the dissolution of Parliament for the 41st federal general election. The use of special warrants was narrowed in 1997; it remains unclear what criteria are used to determine eligible payments under a special warrant.

TIMING | The federal government presents to Parliament within 15 days of its return a statement on its use of special warrants. Parliament will also need to adopt an appropriation bill to authorize government expenditures shortly after its return.

One of Parliament's principal roles is to review, approve and exercise control over the federal government's expenditure of public funds. This oversight occurs primarily through the estimates process, whereby the government presents its spending plans to Parliament and Parliament subsequently adopts appropriation bills that authorize the government's expenditures.

When Parliament was dissolved on 26 March 2011 for the federal general election on 2 May 2011, Parliament had not yet adopted appropriation bills for the *Supplementary Estimates (C), 2010–11* or interim supply for the fiscal year 2011–2012. Parliament was dissolved before the government received parliamentary authorization to spend money.

Given this situation, the government has used Governor General special warrants to authorize its expenditures during the election period. Special warrants authorize government spending during an election without the normal procedures of parliamentary scrutiny. Shortly after Parliament's return, parliamentarians will have the opportunity to review the government's statement on its use of special warrants during the 41st federal general election.

Image: © Corbis.

RULES GOVERNING THE USE OF SPECIAL WARRANTS

If necessary, the government obtains authority for expenditures during an election, and shortly thereafter, through section 30 of the *Financial Administration Act*. This section allows the Governor in Council (i.e., Cabinet) to direct the preparation of a special warrant, to be signed by the Governor General. The warrant authorizes payments for government expenditures.

The Act stipulates three conditions that must be satisfied before a special warrant can be issued:

- Parliament must be dissolved for an election.
- The appropriate minister (whose organization requires funds) must report that payments are urgently required for the public good.
- The President of the Treasury Board must report that there are no other appropriations available for the required payments.

Special warrants may continue to be issued until 60 days following the date fixed for the return of the writs after a federal general election. The date for returning the writs for the 41st general election was 23 May 2011.

The spending period of a special warrant is not specified in the Act. According to the Treasury Board of Canada Secretariat, by convention the period is usually 30 days, with the exception of the final special warrant, which typically has a spending period of 45 days in order to allow Parliament sufficient time to adopt an appropriation bill upon its return.[1]

Special warrants cannot be used during a prorogation of Parliament, and they cannot confer an authority that requires the approval of Parliament, such as transferring funds between organizations. Notices of special warrants must be published in the federal government's *Canada Gazette* within 30 days of being issued, and the President of the Treasury Board must present to Parliament within 15 days of its return a statement of special warrants issued. The amounts appropriated in special warrants are deemed to be included in the next appropriation bill passed by Parliament.

NARROWING THE USE OF SPECIAL WARRANTS

Prior to 1997, the government could use special warrants whenever Parliament was not in session or was adjourned for an extended period. However, there was concern that the government could use special warrants to avoid convening Parliament.

After the 33rd federal general election, Parliament was convened on 12 December 1988 for two weeks, during which the government did not request Parliament's approval of an appropriation bill. The session was adjourned on 30 December 1988. As the government subsequently required funds, it used special warrants in January, February and early April of 1989. Parliament was reconvened on 3 April 1989.

In order to limit the government's ability to use special warrants, a private member's bill was presented and eventually adopted in 1997 to restrict the use of special warrants to election periods.[2]

CRITERIA FOR APPROPRIATE PAYMENTS

Under the *Financial Administration Act*, the appropriate minister must attest that payments sought through special warrants are "urgently required for the public good." The Treasury Board of Canada Secretariat interprets this phrase to mean that the government's core operations are essential and must be maintained. However, it is not clear what criteria are used to determine which payments can and cannot be included in a special warrant.

SENATE REFORM REDUX?

Andre Barnes, Sebastian Spano

ISSUE | Efforts and challenges exist for a reform of the Senate of Canada.

SYNOPSIS | Two notable Senate reform proposals have been brought forward by the government in each of the past two parliaments. This overview highlights these proposals and their possible constitutional implications.

TIMING | The Senate reform debate, as old as the Senate itself, heated up in the 1980s and again in the last two parliaments.

If the bills introduced by the government in the last two parliaments are an indication of legislative initiatives to come, then Senate reform will again be pursued in the new parliament.

In the 39th and 40th parliaments, the government introduced bills to substantially shorten the term of office of a senator and to enable voters of a province to have a say in the selection of senators. Bill C-10 and Bill S-8, the most recent versions of these bills, are the focus of this article.

From a constitutional standpoint, these two initiatives reflected the government's desire to proceed with incremental reforms of the Senate, rather than embarking on major reforms. The latter would entail negotiations with the provinces, making the reforms difficult to achieve.

SENATE TERM LIMITS

Bill C-10, An Act to amend the Constitution Act, 1867 (Senate term limits), was introduced but not passed in the 40th Parliament.[1] It proposed to limit newly appointed senators to one non-renewable eight-year term. The bill sought to amend the current provision in the *Constitution Act, 1867*, which sets a mandatory retirement age of 75 for all senators.

The main constitutional issue raised concerning Bill C-10 was whether Parliament could act without provincial consent in making such an amendment. The *Constitution Act, 1982* sets out four distinct formulas for amending the Constitution. The choice of formula depends upon which component of the Constitution is to be amended. Amendments to the method of selection of senators, the powers of the Senate, the distribution of Senate seats or the residence qualifications of senators require the consent of at least seven provinces representing at least 50% of the population of all the provinces (known as the "7/50 formula"). It was the government's position that since Senate term limits are not mentioned in this list, Parliament could act alone to amend the Constitution in this regard.

In 1980, the Supreme Court of Canada gave an opinion concerning Parliament's powers to reform the Senate through constitutional amendments. While the Court could not provide a definitive opinion on whether Parliament could act alone to limit a senator's term of office, it did comment that, at some point, a reduction in the term of office might impair the functioning of the Senate as a chamber of sober second thought.

The views of academics on the subject remain divided. Some maintain that the Supreme Court's opinion is of little relevance today, since it was based on an amendment process that was significantly changed when the *Constitution Act, 1982* came into force. Others maintain that the principle according to which the essential characteristics of the Senate cannot be altered by Parliament acting alone continues to be relevant.

SENATORIAL SELECTION

Bill S-8, An Act respecting the selection of senators, was also introduced but not passed in the 40th Parliament.[2] It proposed to allow provinces, if they so chose, to conduct provincial elections in which the successful candidates would be considered by the prime minister for nomination to the Senate.

To provide for such elections, the bill proposed that provinces would need to enact legislation substantially similar to a model statute set out in the bill. The model statute was based on legislation enacted in Alberta.

Bill S-8 raised certain constitutional questions. The authority to appoint members of the Senate rests with the Governor General, acting on the advice of the prime minister. In practice, the prime minister selects individuals to recommend to the Governor General for appointment to the Senate. If it had been determined that Bill S-8 would alter the method of selection of senators, such an alteration would have required a constitutional amendment using the "7/50 formula."

It was the government's position that the bill would not affect the selection process. Under the process outlined in the bill, the prime minister would not have been bound to recommend the nominees selected by provincial voters: the prime minister would have been required only to "consider" those nominees. Similarly, the bill did not restrict the Governor General's ultimate authority to appoint individuals to the Senate.

Canada's 105 appointed senators transact business in the "Red Chamber" during the 40th Parliament.

As with Bill C-10, academics have offered differing views on the effect of Bill S-8 and whether or not it modified the method of selection of senators, thereby rendering the proposed reform unconstitutional.

FURTHER READING

- Barnes, Andre, et al. *Reforming the Senate of Canada: Frequently Asked Questions*. Publication no. 2009-02-E. Parliamentary Information and Research Service, Library of Parliament, Ottawa, 2009.
- Bédard, Michel, and Sebastian Spano. *Legislative Summary of Bill S-8: The Senatorial Selection Act*. Publication no. 40-3-S8-E. Parliamentary Information and Research Service, Library of Parliament, Ottawa, 2010.
- Spano, Sebastian. *Legislative Summary of Bill C-10: An Act to amend the Constitution Act, 1867 (Senate term limits)*. Publication no. 40-3-C10-E. Parliamentary Information and Research Service, Library of Parliament, Ottawa, 2010.

THE *FEDERAL ACCOUNTABILITY ACT*: ETHICS AND PUBLIC OFFICE

Élise Hurtubise-Loranger, Dara Lithwick

ISSUE | Are issues of ethics appropriately addressed in the laws and codes applicable to Canadian federal parliamentarians and public office holders?

SYNOPSIS | This overview examines the regulation of ethics by conflict-of-interest and lobbying regimes, asking whether laws and codes are achieving their goals. The concept of private interest, for example, has been interpreted somewhat differently by the Conflict of Interest and Ethics Commissioner and the Commissioner of Lobbying of Canada.

TIMING | Several 2010 documents – *The Cheques Report* (Ethics Commissioner) and the "Clarifications about political activities in the context of Rule 8" (Commissioner of Lobbying) – make the scrutiny of ethics regulations timely. So, too, do current legislative reviews of the *Conflict of Interest Act* and the *Lobbying Act*.

Ethics and politics share a long history. Some 2,500 years ago, Greek philosopher Aristotle considered the character virtues or moral principles that should govern individuals' behaviour. For Aristotle, inquiry into ethics necessarily led to the study of politics, especially law-making, which addressed the principles that should govern communal behaviour in the *polis* (the "city").

The interplay between ethics and politics is evident today on Parliament Hill. There is a Conflict of Interest and Ethics Commissioner, a Senate Ethics Officer, and a House of Commons Standing Committee on Access to Information, Privacy and Ethics.

However, despite its prevalence, the term "ethics" is not defined in any federal legislation or code. Rather, Canadian legislators have focused on regulating behaviour, primarily by encouraging public office holders to act in the greater public interest while disallowing the use of public resources to benefit private interests. A conflict of interest arises when the exercise of an official power, duty or function provides an opportunity to further a public office holder's private interests, or those of relatives or friends, or to improperly further another person's private interests.[1]

LAWS AND CODES GOVERNING ETHICAL BEHAVIOUR

The most recent modifications to the federal "ethics" framework came with the 2006 *Federal Accountability Act*, legislation intended to make Canada's federal government more accountable and to increase transparency and oversight in government operations. The *Conflict of Interest Act*, applicable to public office holders such as ministers, parliamentary secretaries, ministerial advisors and other ministerial staff, and the conflict of interest codes that the Senate and House of Commons adopted to govern their respective members' conduct, are the main federal tools governing conflict of interest. The *Lobbying Act* and the *Lobbyists' Code of Conduct* aim to ensure that federal lobbying activities are transparent and that lobbyists conduct themselves in accordance with ethical standards.

Whether these laws and codes governing ethical behaviour achieve their stated goals is an open question. A case in point is the concept of "private interest," which has been interpreted differently by the Ethics Commissioner and the Commissioner of Lobbying of Canada.

FURTHER READING

- Bédard, Michel, Kristen Douglas and Élise Hurtubise-Loranger. *Conflict of Interest at the Federal Level: Legislative Framework and Oversight.* Publication no. 2010-92-E. Parliamentary Information and Research Service, Library of Parliament, Ottawa, 2010.
- Holmes, Nancy. *The Federal Lobbying System.* Publication no. 2008-17-E. Parliamentary Information and Research Service, Library of Parliament, Ottawa, 2008.

DETERMINING THE SCOPE OF "PRIVATE INTEREST"

In 2010, Ethics Commissioner Mary Dawson held that the concept of private interest, as set out in the House of Commons Members' code and the *Conflict of Interest Act*, is limited to interests of a financial nature resulting in a pecuniary advantage, and does not extend to actions that may result in other types of advantage, such as political partisan advantage. This raises the question: Is "private interest" too narrowly defined to sufficiently limit conflicts of interest?

Commissioner Dawson seemed to suggest so in her April 2010 report to Parliament on the use of partisan identifiers on ceremonial cheques for Government of Canada funding announcements. While noting that "the interest in enhancing political profiles is a partisan political interest and not a private interest," she also added that "the practice of using partisan identifiers in announcing government initiatives goes too far and has the potential to diminish public confidence in the integrity of Members and the governing institutions they represent."[2]

In contrast, during the 2011 federal election, questions arose regarding the Commissioner of Lobbying Karen E. Shepherd's recent interpretation of Rule 8 of the *Lobbyists' Code of Conduct*. Rule 8 provides that "lobbyists shall not place public office holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on a public office holder." Commissioner Shepherd indicated that political activities undertaken by lobbyists could count as actions that put a public office holder in a conflict of interest by advancing the public office holder's private interest.[3] This implicitly suggests a broader interpretation of "private interest" than that taken by the Ethics Commissioner.

REFLECTING ON CONFLICTS OF INTEREST

A statutory review of the *Lobbying Act* began in March 2011, and the *Conflict of Interest Act* is due for statutory review in 2012. With these reviews, parliamentarians will be able to reflect on the nature and scope of activities that should be considered conflicts of interest, as well as the broader question of the interaction between ethics and politics on Parliament Hill.

Image: Wikimedia Commons.

Aristotle's study of ethics and politics built on the work of his teacher Plato (left). (Detail from Raphael's *The School of Athens*)

SOME PUBLIC POLICY IMPLICATIONS OF AN AGING POPULATION

Havi Echenberg, James Gauthier, André Léonard

ISSUE | Canada's aging population affects public policy in many areas, including public pensions, health care and caregiving.

SYNOPSIS | By 2036, seniors will comprise about 25% of Canada's population, and the growing aging population will place a financial burden on public pensions and health care, among other impacts. Existing federal programs address some of the financial effects on non-institutional caregivers.

TIMING | An actuarial report on the Old Age Security program is expected in 2011; legislated changes to Canada Pension Plan rules will be implemented between 2011 and 2016.

A parliamentary review of the federal–provincial *10-Year Plan to Strengthen Health Care* agreement will occur in 2011, possibly informing health care renewal discussions.

A major population change that will impact Canada and its public policies in the years to come is its aging population – a trend resulting mostly from lower fertility rates and increases in life expectancy.

While seniors (people aged 65 and over) represented 8% of the population in 1971, this segment is expected to increase to 14% in 2011 and almost 25% by 2036, when senior women are expected to outnumber senior men by approximately 700,000, compared with 545,000 currently.

Among its impacts, this phenomenon is expected to place a financial burden on public pensions, health care and caregiving.

PUBLIC PENSIONS

The Old Age Security (OAS) pension and the Guaranteed Income Supplement (GIS) for low-income seniors are programs financed by federal government general revenues. In 2009, OAS cost $27.1 billion and GIS benefits, $7.7 billion.

Due to the aging population, OAS and GIS payments are expected to quadruple (or double, accounting for inflation) between 2009 and 2036. There have been pressures to improve these programs, as seniors tend to have lower incomes than working-age Canadians.

The earnings-related Canada Pension Plan (CPP) is financed by employee–employer (including self-employed) contributions and interest earned on the investment of that money. The combined employee–employer contribution rate, at 3.6% in 1986, increased to 9.9% from 2003 on, resulting in annual surpluses as of 2001. These surpluses, which are expected to continue until 2020, should make the CPP financially sustainable over the long term.

Between 2011 and 2016, legislated changes to the CPP will be implemented to increase program flexibility and provide incentives to remain longer in the workforce. For example, the penalty for starting to receive benefits at 60 (before the usual retirement age of 65) will increase from 30% to 36%, while the bonus for starting at 70 will increase from 30% to 42%. CPP recipients will be able to exclude longer periods of low earnings from the calculation of CPP benefits. These changes are expected to be financially neutral for the program.

FURTHER READING

- Deraspe, Raphaëlle, and James Gauthier. "Canada Health Transfer: Equal-per-Capita Cash by 2014." In *Current and Emerging Issues for the 41st Parliament*. Library of Parliament, Ottawa, 2011. [See p. 18 in this publication.]
- Duxbury, Linda, Christopher Higgins and Bonnie Schroeder. *Balancing Paid Work and Caregiving Responsibilities: A Closer Look at Family Caregivers in Canada*. Canadian Policy Research Networks, Ottawa, 2009.
- Léonard, André. *Changes to Retirement Benefits of the Canada Pension Plan*. Publication no. 2011-41-E. Parliamentary Information and Research Service, Library of Parliament, Ottawa, 2011.

Other challenges include financial preparedness for retirement and the cost of the federal public service pension plan. In the latter case, the government's real cost (adjusted for inflation) is expected to increase by $700 million from 2009 to 2023. This is on top of a $20 billion increase for OAS and GIS.

HEALTH CARE

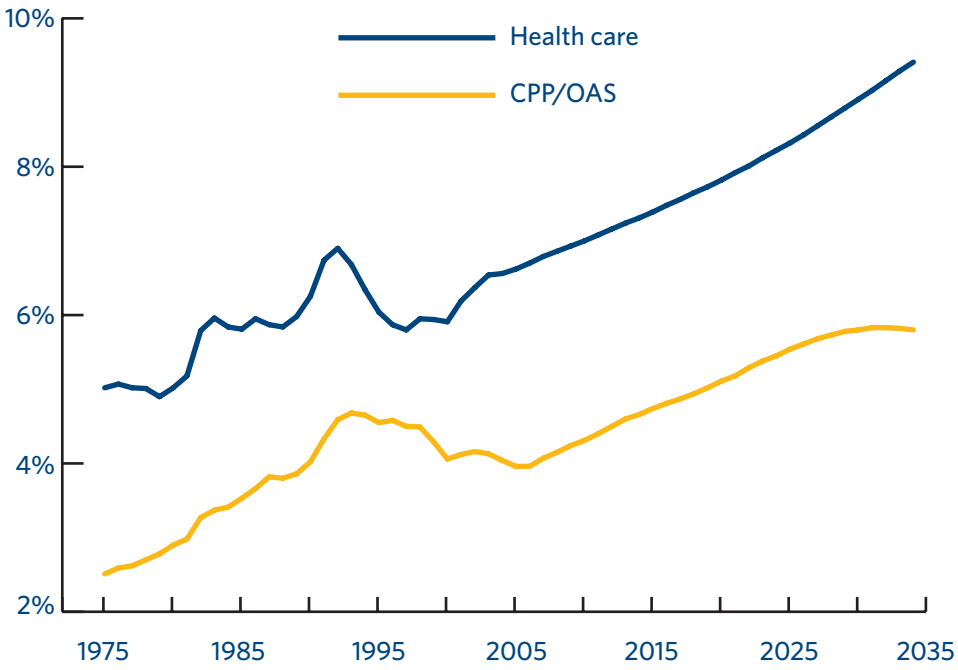
While seniors represent about 14% of the population, they consume nearly 44% of all annual provincial and territorial health care expenditures. Total spending on health care exceeded $191 billion in 2010. Two thirds was provided by provincial and territorial governments, including $25 billion in federal government support through the Canada Health Transfer.

Provincial and territorial government health care spending has grown faster than the economy, increasing from 5% of gross domestic product (GDP) in 1975 to 7% in 2010. With an aging population, this trend is projected to continue, with independent forecasts ranging between 9% and 12% of GDP by 2036.[1]

Most health care costs in Canada are covered through publicly funded universal health insurance plans, known to Canadians as "medicare." Given the aging population, health care demands are expected to grow in areas where universal coverage is not always provided, such as pharmaceuticals, long-term care, home care and end-of-life care.

Governments' abilities to address the future health care needs of an aging population will likely depend on factors such as economic growth, innovations in health care delivery that improve cost effectiveness, the health status of seniors, and trade-offs among coverage, taxation and debt-financing.[2]

Historical and Projected Provincial/Territorial Health Expenditures and CPP/OAS Expenditures (Including GIS and Administration Costs), as a Share of GDP



Sources: For health care data – Office of the Parliamentary Budget Officer, *Fiscal Sustainability Report*, 18 February 2010, and authors' calculations; for CPP/OAS data – Office of the Superintendent of Financial Institutions, *Actuarial Report on the Canada Pension Plan*, 2010, and *Actuarial Report on the Old Age Security Program*, 2008.

CAREGIVING

Recent research reports that one in four employed Canadians care for an elderly dependant. Of these, 75% are middle-aged women caring for a parent with chronic health issues. Increased expenses and reduced work hours may create financial strains.

Two federal programs support informal and unpaid caregiving:

- The Employment Insurance program provides Compassionate Care Benefits to eligible employees for up to six weeks to care for or support a gravely ill family member "with a significant risk of death." Some self-employed individuals may also be eligible for these benefits.
- An income tax deduction is available for one or more individuals who maintain a "dwelling" for a dependent family member born before 1945.

Proposals for improving support for caregivers have included extending compassionate leave provisions and duration, changing CPP provisions to protect retirement incomes for caregivers, and making the tax deduction refundable, and therefore helpful to lower-income caregivers.[3]

CANADA HEALTH TRANSFER: EQUAL-PER-CAPITA CASH BY 2014

Raphaëlle Deraspe, James Gauthier

ISSUE | What are the effects of changes to the Canada Health Transfer in the transition to an equal-per-capita cash allocation by 2014–2015?

SYNOPSIS | As currently required in legislation, the Canada Health Transfer shall move to a full equal-per-capita cash allocation in 2014–2015, following the expiry of the *10-Year Plan to Strengthen Health Care*. This transition will affect provinces differently, depending on their level of per capita CHT cash relative to other provinces.

TIMING | As required in legislation, the second statutory review of the *10-Year Plan to Strengthen Health Care* shall be undertaken by a parliamentary committee in 2011, possibly informing discussions related to health care renewal and the Canada Health Transfer.

Before the *10-Year Plan to Strengthen Health Care* expires at the end of fiscal year 2013–2014, the Canada Health Transfer (CHT) will need to be renegotiated by federal and provincial governments. Although a broad range of issues are likely to be raised during these discussions, this overview focuses on the legislated commitment to move towards an equal-per-capita CHT cash transfer.

The 10-Year Plan is an agreement reached among first ministers in 2004 that identifies areas where greater investments are necessary to support health care renewal.[1] Through it, the federal government increased funding to provinces for health by $41.3 billion over 10 years. Most of this increase ($35.3 billion) was included within the CHT, while a separate payment of $5.5 billion was made to reduce wait times, and $500 million was provided for medical equipment.

HOW THE CANADA HEALTH TRANSFER WORKS

The CHT is the primary source of federal support to provinces for health care. While the provinces can use this funding as they deem appropriate, they must comply with the *Canada Health Act* criteria (i.e., universality, accessibility, comprehensiveness, portability and public administration) and conditions (i.e., prohibition against extra billing by physicians and user charges by hospitals) to receive their full CHT cash allocation. The CHT includes a cash transfer and a tax point transfer. The total cash transfer is set in legislation and grows by 6% annually. The tax point transfer corresponds to 13.5 percentage points of personal income tax and 1 percentage point of corporate income tax.

FURTHER READING

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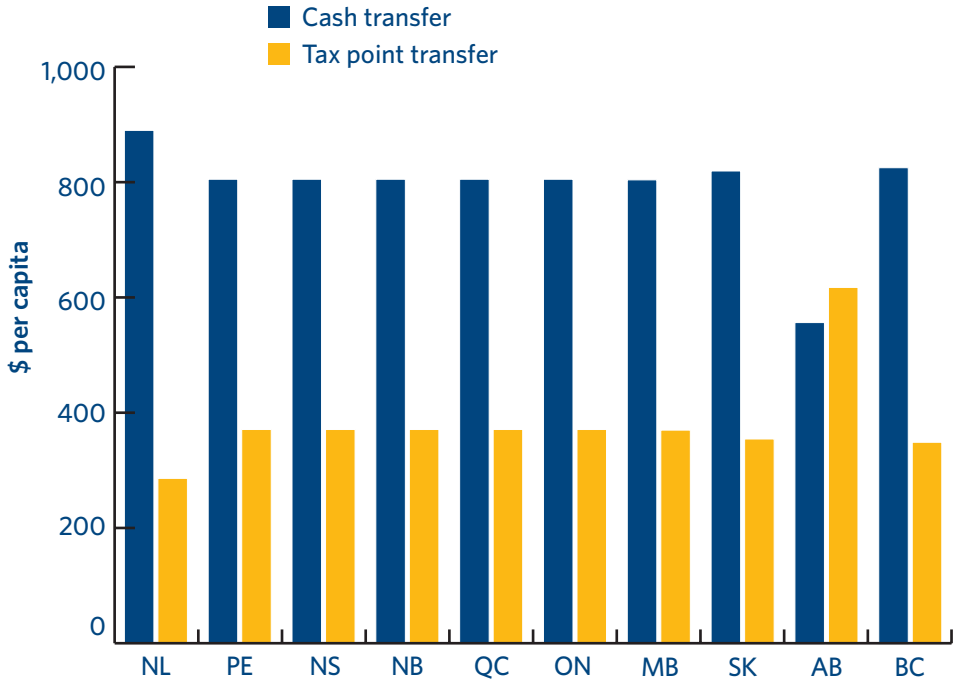
Once the overall value of the tax transfer is calculated, it is added to the legislated total cash transfer to obtain the total CHT. The total CHT is then divided by total population to determine per capita total CHT. Each province's per capita CHT cash is calculated as a residual (i.e., the province's per capita share of total CHT less its per capita tax point transfer). CHT cash includes an equalizing component, since the per capita cash transfer is higher for provinces with relatively weak tax point transfers, and vice versa.

ALLOCATING THE CHT ON AN EQUAL-PER-CAPITA CASH BASIS

In response to the view that interprovincial equity is more appropriately addressed through the Equalization program, in Budget 2007 the federal government committed to remove the equalizing component of the CHT by legislating that the cash transfer move to an equal-per-capita allocation in 2014–2015,[2] the first year of a new agreement following the expiry of the 10-Year Plan.

Concerns about the equalizing component of the cash transfer have been raised more recently due to economic shifts resulting from high natural resource prices, a stronger Canadian dollar, and a decline in manufacturing. For example, even though Ontario became a poorer province relative to provinces with abundant natural resources, its per capita CHT cash transfer continued to be lower than average due to its relatively strong tax point transfer.

The Canada Health Transfer, 2011–2012



Source: Figure prepared by the Library of Parliament using data obtained from Finance Canada on 22 December 2010.

In response to these recent economic shifts, Budget 2009 facilitated the move to an equal-per-capita cash transfer for Ontario by ensuring that the province immediately receive the same per capita CHT cash as other relatively poorer provinces,[3] and further committed the federal government to work with all provinces on how to transition to full equal-per-capita cash in 2014–2015.

In reaction to the move towards equal-per-capita CHT cash, some have suggested that the federal government introduce new funding to mitigate the impact on provincial finances. Others have proposed alternative allocations, such as allocating CHT cash based on the varying provincial health care pressures, or providing additional tax point transfers.

THE CRIMINAL LAW POWER AND THE *ASSISTED HUMAN REPRODUCTION ACT*

Marlisa Tiedemann

ISSUE | Some provisions of the federal *Assisted Human Reproduction Act* have been found to exceed the legislative authority of Parliament.

SYNOPSIS | In a divided judgment, the Supreme Court of Canada found that relying on the use of the criminal law power to legislate with respect to certain aspects of assisted human reproduction infringed on provincial jurisdiction.

TIMING | The decision, released on 22 December 2010, may have implications for other federal health-related bills introduced in the future.

Although some legislative powers relating to health and health care are mentioned in the *Constitution Act, 1867*, there is no explicit reference to "health." For example, Parliament has authority for "quarantine and the establishment and maintenance of marine hospitals," while responsibility for most other hospitals is assigned to the provinces. As a result, Parliament or provincial legislatures may validly enact health-related legislation, depending on the circumstances of the case and the scope of the issue being addressed.[1] This article examines a constitutional challenge to the 2004 *Assisted Human Reproduction Act* (AHRA).

THE CRIMINAL LAW POWER

Parliament has relied on the use of the criminal law power contained in section 91(27) of the *Constitution Act, 1867* to legislate with respect to a number of health-related matters. It is generally accepted that health-related criminal law legislation must contain a prohibition accompanied with a penal sanction. In addition, the legislation must be directed at a legitimate issue of public health and safety.[2] The AHRA prohibits a number of activities related to assisted human reproduction, including human cloning, paying a surrogate mother, and purchasing sperm or ova. The AHRA also establishes a number of activities that are prohibited unless they are licensed.

Image: © Radius Images/Corbis.

Parliament's use of the criminal law power to enact the *Assisted Human Reproduction Act* has been challenged.

A CONSTITUTIONAL CHALLENGE

The use of the criminal law power to legislate with respect to assisted human reproduction has been the subject of a constitutional challenge. The Attorney General of Quebec argued that, rather than addressing a legitimate public health issue, many of the provisions of the AHRA regulated the practice of medicine and research related to assisted human reproduction, which was within provincial jurisdiction. On 18 June 2008, the Quebec Court of Appeal concluded that the provisions in question were not validly enacted under the federal criminal law power and infringed on provincial jurisdiction. On 22 December 2010, the Supreme Court of Canada agreed with part of that decision.

A DIVIDED DECISION

The decision of the Supreme Court of Canada was divided. With a minor variation, four judges agreed with the Quebec Court of Appeal, while four others concluded that all of the challenged provisions of the AHRA were validly enacted. The ninth judge, Justice Cromwell, concluded that some of the provisions were validly enacted (e.g., section 8, use of reproductive material without consent) while others exceeded the legislative authority of Parliament (e.g., section 10(1), using human reproductive material to create an embryo except in accordance with the regulations and a licence). Justice Cromwell's reasons, which essentially provide the deciding judgment, establish what was and was not validly enacted.

Determining whether a law is valid involves first determining the dominant "pith and substance" of the legislation. The reasons of the two groups of four judges outline their approaches to the pith and substance analysis, and it is their differences in this regard that led to contrasting conclusions with respect to the validity of the enacted provisions.

One group of judges concluded that the pith and substance of the challenged legislation was to prohibit negative practices associated with assisted human reproduction, while the other group concluded that the pith and substance was to regulate assisted human reproduction as a health service, which falls within provincial jurisdiction. Justice Cromwell, however, concluded that the pith and substance was the regulation of almost all aspects of research and clinical practice related to assisted human reproduction.

IMPLICATIONS

The stark contrast between the three sets of reasons in the AHRA case demonstrates the complexities involved in relying on the criminal law power to legislate with respect to health-related matters. Only time will tell how this decision will affect any AHRA amendments that may be brought forward, and whether it will influence the approach taken should the criminal law power be used to legislate with respect to health-related matters in the future.[3]

The use of the criminal law power as authority for federal health-related statutes was also questioned during the 40th Parliament, in connection with Bill C-11, the Human Pathogens and Toxins Act. Witnesses before committees of both Houses suggested that the bill was more regulatory than criminal in nature, and was therefore not a valid exercise of Parliament's criminal law power. Nevertheless, Bill C-11 received Royal Assent on 23 June 2009.

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FIRST NATIONS EDUCATION

Tonina Simeone

ISSUE | The federal on-reserve First Nations education program does not offer many of the supports and structures provided by the provinces off-reserve.

SYNOPSIS | The daily management of the on-reserve school system has been largely devolved to First Nations; however, the limited governance and administrative framework to support those schools remains a long-standing concern. Options to reform the First Nations elementary and secondary education system are currently being identified.

TIMING | In December 2010, the Government of Canada, in collaboration with the Assembly of First Nations, announced the creation of a national Panel of Experts to advise on options, including legislative measures, for reforming First Nations education. Following an "engagement process," the Panel is expected to table a final report by mid-2011.

Whereas provincial and territorial governments have developed comprehensive education systems – including education departments, elected school boards, education acts, and legal requirements for parental involvement – the federal government's First Nations education system lacks many, if not most, of these features.

FEDERAL ROLE

Constitutional authority to make laws in relation to education rests with provincial governments, while the federal government retains responsibility for elementary and secondary education on First Nations reserves. Federal authority for matters dealing with "Indians, and lands reserved for the Indians," including education, stems from section 91(24) of the *Constitution Act, 1867*. In addition, the numbered treaties, concluded between 1871 and 1910, commit the federal Crown to maintaining schools and providing educational services to signatory First Nations as part of its ongoing treaty obligations.

Federal responsibility for First Nations elementary and secondary education is managed principally by the Department of Indian Affairs and Northern Development (DIAND) through its Elementary and Secondary Education Program. The program supports instructional services in on-reserve schools, reimbursement of tuition costs for students who attend off-reserve provincial schools, and other services such as transportation, counselling and financial assistance.

Current federal policy commits to providing educational services to First Nations "comparable to those required in provincial schools by the statutes, regulations or policies of the province in which the reserve is located."[1] Unlike the provinces, however, the federal government has not enacted specific legislation governing First Nations education, beyond the modest provisions set out in the *Indian Act* and various policy statements and guidelines.

FUNDING

According to its 2010–2011 *Report on Plans and Priorities*, DIAND will spend roughly $1.77 billion for educational services to approximately 120,000 elementary- and secondary-level students, with projections of $1.81 billion for 2011–2012 and $1.85 billion for 2012–2013. Education funding, excluding capital costs, is calculated using a national formula (last updated in 1996) and distributed through various funding arrangements

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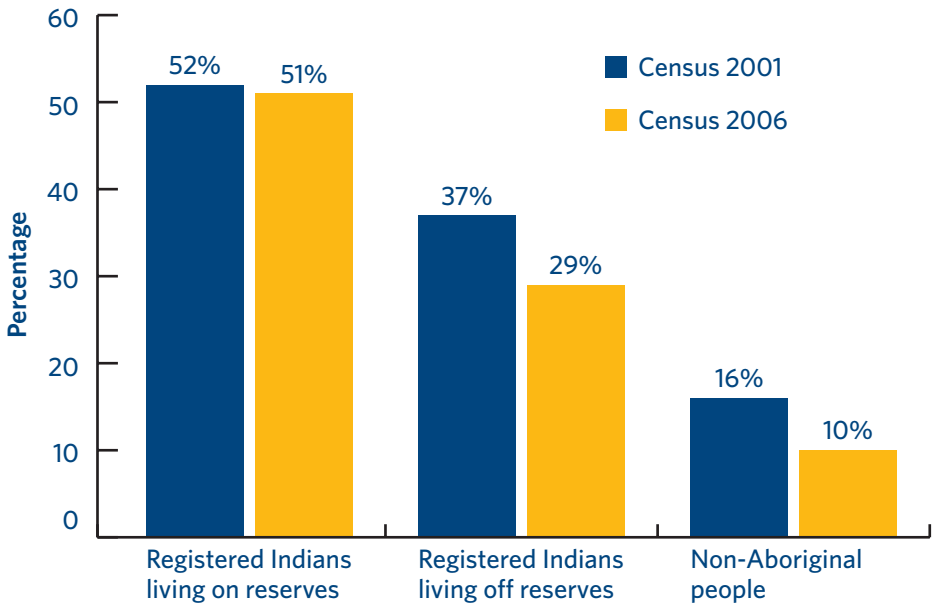
with First Nations and the provinces. Since 1996, there has been a 2% cap on annual increases in DIAND's education funding. The cap has been a source of tension between DIAND and First Nations, which argue that, when population increases and inflation are accounted for, current funding levels continue to result in education shortfalls.

DEVOLUTION

In 1972, the National Indian Brotherhood, precursor to the Assembly of First Nations (AFN), articulated its vision of education in a position paper entitled *Indian Control of Indian Education*. The document set out an educational philosophy affirming the principles of local control of education and parental responsibility. Soon after the document's release, DIAND launched a process of transferring administrative responsibility for on-reserve elementary and secondary education to First Nations. Although still legally and constitutionally responsible for education, DIAND has largely limited its role to one of funding education services for the past 30 years. Currently, there are 518 band-operated or First Nations schools in Canada, with a handful still managed by DIAND.

Although the daily management of schools was transferred to First Nations, an integrated education system, similar to provincial/territorial systems, was not developed. The absence of these critical education supports is considered by some First Nations to contribute to the low education outcomes of First Nations students: in 2006, about 50% of the on-reserve population aged 25 to 34 did not have a high school leaving certificate, compared with 10% for other Canadians of the same age (see figure). In 2004, the Auditor General found that, at current rates of progress, it would take 28 years for First Nations people living on reserves to reach educational parity with the Canadian population as a whole.

High School Non-completion Rates for First Nations People and Non-Aboriginal People Aged 25 to 34, 2001 and 2006



Source: Figure prepared by the Library of Parliament using data from Statistics Canada, 2001 and 2006 Census tabulations. (Under-reporting of high school completions contributed to the elevated results obtained in censuses before 2006.)

REFORM

In December 2008, in an effort to improve education outcomes among First Nations children, DIAND launched its Reforming First Nation Education Initiative, including two new programs aimed at supporting improvements in student literacy and numeracy as well as partnership arrangements between First Nations and provincial schools.[2]

Under this initiative, in December 2010 the federal government, along with the AFN, announced the creation of a national Panel of Experts to advise on options, including legislation, to improve education outcomes. The announcement followed the AFN's June 2010 Call to Action on First Nations Education, which highlighted the need for a fundamentally new approach to education, including statutory funding arrangements and the establishment of First Nations education systems.[3]

THE SPECIFIC CLAIMS PROCESS: RECENT LEGAL AND POLICY REFORMS

Danielle Lussier, Shauna Troniak

ISSUE | Canada engages in a new approach to resolve specific claims made by First Nations.

SYNOPSIS | The *Specific Claims Tribunal Act* established an administrative tribunal with the authority to make binding decisions on claims and to award monetary compensation up to $150 million per claim. Claims over $150 million will be dealt with through a specially mandated Cabinet process.

TIMING | Under the *Specific Claims Tribunal Act*, certain claims will be eligible for filing with the Specific Claims Tribunal as of 16 October 2011.

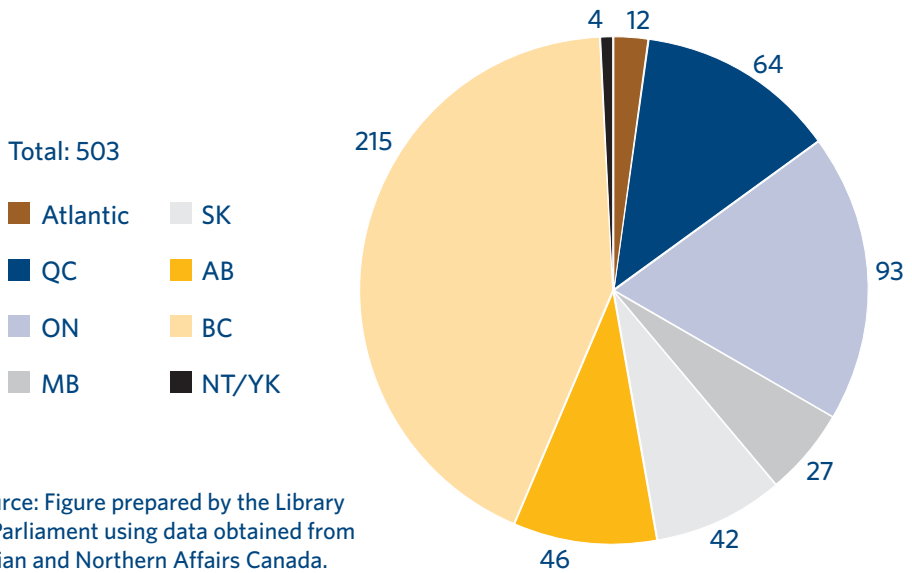
Federal policy divides Aboriginal land claims into two broad categories: specific claims and comprehensive claims. Specific claims arise from the alleged non-fulfillment of historic treaties between First Nations and the Crown, or improper administration of First Nations lands and other assets by the Crown. Comprehensive claims are based on the assertion of continuing Aboriginal rights and title that have not been dealt with by treaty or other legal means. This overview focuses on the specific claims process.

Between April 2010 and April 2011, 18 specific claims were settled at a total value of approximately $666 million. The monetary value of the claims settled in this period ranged from $134,283 to $231.4 million. As of 5 April 2011, 503 specific claims remain in the federal inventory of claims under assessment or in negotiations.[1]

SPECIFIC CLAIMS ACTION PLAN

Over the past several years, the federal specific claims process has been the subject of legal and policy reform initiatives intended to reduce the backlog of outstanding claims. In response to a 2006 report of the Standing Senate Committee on Aboriginal Peoples, which highlighted the need for reforms to the specific claims process in several areas, the federal government launched *Specific Claims: Justice at Last – Canada's Specific Claims Action Plan* in June 2007. The reforms proposed in the action plan included an independent tribunal to make binding decisions on claims that cannot be resolved by negotiations, dedicated funding for specific claims settlements, and practical measures to improve the processing of both small and large claims.[2]

Location of Specific Claims Under Assessment or in Negotiations (as of 5 April 2011)



Source: Figure prepared by the Library of Parliament using data obtained from Indian and Northern Affairs Canada.

SPECIFIC CLAIMS TRIBUNAL ACT

The *Specific Claims Tribunal Act* was introduced in the House of Commons on 27 November 2007 and came into force on 16 October 2008. The Act creates the Specific Claims Tribunal, an administrative tribunal composed of Superior Court judges with authority to make binding decisions on claims and to award monetary compensation up to a maximum of $150 million per claim.

The Act stipulates that a First Nation may file a claim with the tribunal if the claim has been previously filed with the minister of Indian Affairs and Northern Development, and if:

- the minister has notified the First Nation of his or her decision not to negotiate the claim, in whole or in part, after the coming into force of the Act;
- three years have elapsed after the day on which the claim was filed with the minister, and the minister has not notified the First Nation in writing of his or her decision on whether to negotiate the claim;
- in the course of negotiating the claim, before the three years have elapsed, the minister consents in writing to the filing of the claim with the tribunal; or
- three years have elapsed after the day on which the minister has notified the First Nation in writing of his or her decision to negotiate the claim, in whole or in part, and the claim has not been resolved by a final settlement agreement.

In effect, the *Specific Claims Tribunal Act* introduces three-year timelines for the assessment and negotiation of specific claims. As a result of these timelines, certain cases will become eligible for filing with the tribunal as of 16 October 2011.

With this deadline in view, the Specific Claims Tribunal is currently preparing for the commencement of operations. Between November 2009 and November 2010, several Superior Court judges were appointed to the tribunal, and Justice Harry Slade was appointed as its chairperson. Draft Rules of Practice and Procedure were made public in June 2010 and are currently under review by the Department of Justice. The tribunal's first annual report, dated 30 September 2010, provides a synopsis of work undertaken to that date and of anticipated activities through the current and following fiscal years.[3]

POLITICAL AGREEMENT BETWEEN THE FEDERAL GOVERNMENT AND THE ASSEMBLY OF FIRST NATIONS

The introduction of the *Specific Claims Tribunal Act* in November 2007 was accompanied by the signing of a political agreement between the Minister of Indian Affairs and Northern Development and the National Chief of the Assembly of First Nations. The political agreement provides for additional discussion on improvements in the resolution of specific claims not directly addressed in the legislation, including matters related to claims that exceed the monetary cap of $150 million. The development of a Cabinet process to address claims over $150 million is ongoing.

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SENTENCING IN CANADA: RECENT DEVELOPMENTS

Marcia Jones, Cynthia Kirkby

ISSUE | Issues related to the sentencing, release and pardoning of offenders have recently garnered much attention in Parliament.

SYNOPSIS | This overview highlights recent developments in the area of sentencing, with a focus on mandatory minimum sentences, conditional sentences, conditional release, the sex offender registry and pardons. Some of the legislative changes that were made and proposed during the last session of the 40th Parliament are highlighted.

TIMING | Many of the amendments discussed in this overview come into force on proclamation, and had not been proclaimed in force at time of writing. It is possible that amendments that died on the *Order Paper* will be reintroduced in the 41st Parliament.

In the criminal justice system, perhaps nothing draws public attention more than the sentencing, release and pardoning of offenders. Unlike other jurisdictions, Canada has no sentencing commission to provide systemic analysis and research in this area.

Recent amendments to Canada's sentencing regime are said to focus on repeat and serious offenders and hold offenders accountable, but will likely increase the use and duration of incarceration. While some contend that these measures will enhance public safety, others argue they could have a significant financial and human cost, with little benefit for public safety.

The following discussion highlights five areas where amendments were proposed during the last session of the 40th Parliament.

MANDATORY MINIMUM SENTENCES

Mandatory minimum sentences (MMSs) signal that an offence warrants at least a certain period of incarceration. The first *Criminal Code* (1892) contained MMSs; their number has increased from six in 1976 to over 40 now.[1] Proponents of MMSs say they reduce sentencing disparity, although opponents argue that, by limiting judicial discretion, they result in disproportionate sentences in some cases, or plea bargains to avoid the MMSs.

Pursuant to bills C-21 and S-9, respectively, MMSs will now apply to fraud over $1 million and repeated cases of auto theft. Bills introducing MMSs for drug-related offences (S-10) and additional sexual offences against children (C-54) died on the *Order Paper*.

CONDITIONAL SENTENCES

Conditional sentences allow for certain sentences of imprisonment of under two years to be served in the community. Proponents say conditional sentences reduce the use of incarceration while emphasizing restorative justice, but critics say they are too lenient for some offences.

The use of conditional sentences has been progressively restricted since their introduction in 1996. Such sentences are unavailable for offences with an MMS, and 2007 *Criminal Code* amendments preclude their use for certain "serious personal injury," terrorism and organized crime offences. Bill C-16, which died on the *Order Paper*, would have clarified that they are unavailable for certain indictable offences, including abduction and criminal harassment.

CONDITIONAL RELEASE

In 2007, a government-appointed panel recommended that two types of conditional release for offenders in federal penitentiaries be eliminated, to enhance offender accountability and to lower recidivism.[2] Under Accelerated Parole Review (APR), qualifying offenders are eligible for day parole after serving the greater of one sixth

or six months of their sentence, and cannot be refused parole unless there is reason to believe that they will commit a violent offence. Statutory release is automatically granted to most offenders after serving two thirds of their sentence, in order to supervise their gradual reintegration into the community.

Bill C-59 eliminated APR. Bill C-39, which would have clarified the scope of statutory release and allowed victims to present statements at parole hearings, died on the *Order Paper*. Despite the panel's recommendations, critics believe that eliminating APR and statutory release will overburden the prison system and reduce opportunities for offenders to reintegrate into the community.

Bills Related to Canada's Sentencing Regime Introduced in the 3rd Session of the 40th Parliament

BILL	SHORT TITLE	STATUS
S-2	Protecting Victims From Sex Offenders Act	Royal Assent
S-9	Tackling Auto Theft and Property Crime Act	Royal Assent
S-10	Penalties for Organized Drug Crime Act	Died on the *Order Paper*
C-16	Ending House Arrest for Property and Other Serious Crimes by Serious and Violent Offenders Act	Died on the *Order Paper*
C-21	Standing up for Victims of White Collar Crime Act	Royal Assent
C-23A	Limiting Pardons for Serious Crimes Act	Royal Assent
C-23B	Eliminating Pardons for Serious Crimes Act	Died on the *Order Paper*
C-39	Ending Early Release for Criminals and Increasing Offender Accountability Act	Died on the *Order Paper*
C-54	Protecting Children from Sexual Predators Act	Died on the *Order Paper*
C-59	Abolition of Early Parole Act	Royal Assent

Source: Table prepared by the Library of Parliament using data from LEGISinfo (Parliament of Canada website).

SEX OFFENDER REGISTRY

The sex offender registry is intended to help police investigate sexual crimes through the registration of such information as what convicted sex offenders look like, where they live and work, and certain offence-related details.

Due to Bill S-2, all individuals convicted of offences such as sexual assault and those involving child pornography will automatically be included in the national registry. Some suggest this could make the registry less useful during investigations, since police would have many low-risk suspects to rule out. Others believe the registry should be made public, as in certain American states. Bill C-54, which would have recognized additional sexual offences against children for which registration would have been mandatory, died on the *Order Paper*.

PARDONS

A pardon is a formal attempt to remove the stigma attached to having a criminal record. Since pardons may make it easier to obtain housing or employment, some believe they may encourage offenders to be law-abiding, and thereby increase public safety.

Bill C-23A extended, for many offences, the number of years to wait before applying for a pardon, and added further criteria, including whether the pardon could bring the administration of justice into disrepute. The application fee also recently tripled, from $50 to $150. A further increase to $631 has been proposed, to better reflect the processing cost;[3] advocates say this fee could be prohibitive. Bill C-23B, which would have changed the term "pardon" – suggesting forgiveness – to "record suspension," died on the *Order Paper*.

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- MacKay, Robin. *Legislative Summary of Bill C-23B: Eliminating Pardons for Serious Crimes Act*. Publication no. 40-3-C23B-E. Parliamentary Information and Research Service, Library of Parliament, Ottawa, 2010.

BILINGUALISM OF SUPREME COURT JUDGES

Marie-Ève Hudon, Lucie Lecomte

ISSUE | The Supreme Court is exempt from certain language requirements pertaining to the appointment of judges. The issue has recently sparked political and public debate.

SYNOPSIS | Existing laws impose certain language requirements on the Supreme Court, but the requirement that Supreme Court judges be able to understand both official languages is not among them. Instead, it is one criterion taken into consideration when appointing judges to Canada's highest court. Some people would like bilingualism to be mandatory, while others want to maintain the status quo.

TIMING | Since May 2008, five amending private members' bills have been tabled in the House of Commons. The bills sought to make the ability to understand both official languages a requirement for appointment to the Supreme Court. All five bills died on the *Order Paper*.

The Supreme Court of Canada was created in 1875 under the *Supreme Court of Canada Act* (SCA).

The *Constitution Act, 1867* (section 133), the *Canadian Charter of Rights and Freedoms* (sections 16 and 19), the *Official Languages Act* (OLA, parts II and III) and the *Rules of the Supreme Court of Canada* (Rule 11) require the Supreme Court to observe a number of principles related to Canada's linguistic duality. These requirements are in line with the right of Canadians to use either official language in courts established by Parliament. Oral and written communication with the Supreme Court can therefore be in English or French. Simultaneous translation is provided under certain conditions.

CRITERIA FOR APPOINTING JUDGES

The OLA applies to all courts, but the Supreme Court, for a variety of reasons, including geographic representation, is not subject to sections 16 and 17 of this Act. Those sections deal with judges' comprehension of the official languages and the authority to make related rules of procedure. The OLA does not require Supreme Court judges to understand proceedings equally well in English and French without the assistance of an interpreter, as it does for judges in other federal courts.

The SCA sets out a number of conditions for the appointment of Supreme Court judges. Federal judicial advisory committees are given the task of assessing candidates, and "professional competence and overall merit are the primary qualifications."[1] Other non-mandatory criteria, such as comprehension of the two official languages, also come into play in the assessment of candidates.

LEGISLATIVE ACTIVITY

Five bills calling for mandatory bilingualism have been tabled in the House of Commons. Bill C-548 (May 2008) sought to amend section 16 of the OLA to require that the Supreme Court, like other federal courts, ensure that its judges be capable of hearing cases in either language without the assistance of an interpreter. Bill C-559 (June 2008) would have established a similar requirement to understand both official languages by amending section 5 of the SCA instead. A similar bill, C-232, was introduced three times (since November 2008) and had just been referred to a Senate committee when the 40th Parliament was dissolved. All of these bills died on the *Order Paper*.

ARGUMENTS FOR REQUIRING JUDGES TO BE BILINGUAL

Advocates of mandatory bilingualism believe that comprehension of the two languages must be a requirement for newly appointed judges.

They take the view that this is first and foremost a question of principle, stating that the highest court in the land should reflect Canadian values, one of which is linguistic duality. They argue that it is also a question of individual rights: Canadians have the right to be heard in the language of their choice. The argument is rooted

in the contention that there are many opportunities today for judges to learn the other official language before they are appointed to the Court. It is based also on the nature of federal statutes. Federal statutes are written in English and French, and the two versions are equally authoritative, which must be taken into consideration when interpreting them. Proponents of mandatory bilingualism argue that simultaneous translation may not be enough to do justice to the complexity and subtlety of arguments and legal language. Finally, this group raises the following principle: the equality of the two languages recognized in case law also provides for the equal treatment of Anglophones and Francophones.

ARGUMENTS FOR THE STATUS QUO

Opponents of mandatory bilingualism believe that compromising the quality of decisions by focusing on language skills would be unacceptable.

They take the view that this issue is first and foremost one of capacity, maintaining that the pool of candidates proficient in both languages is too small, especially considering the geographic criteria applied to the appointment process. They assert that measures should therefore be taken to develop second-language learning opportunities throughout the country before making bilingualism mandatory. They also argue that the issue is one of competence, contending that judges are experts in law, not language. They believe that access to simultaneous translation and written documents, as well as reviewing cases before hearing them, is sufficient. According to this group, while it may be desirable to have bilingual judges, requiring all judges to be bilingual before they take up their duties would be unrealistic, and excellent jurists could be passed over for appointment to the bench.

Image: Wikipedia.org, "Supreme Court of Canada."

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HUMAN RIGHTS IN CANADA: STRIKING A BALANCE

Julia Nicol, Julian Walker

ISSUE | How can competing rights co-exist in a free and democratic society?

SYNOPSIS | Human rights are constitutionally protected in Canada, but they are not absolute. When competing issues arise, it often falls to the courts and the legislatures to strike an appropriate balance between various societal and individual rights and interests.

TIMING | Canadian courts, tribunals and legislatures currently face challenges in weighing competing rights and interests, including those related to the freedoms of expression, religion and assembly. In addition, legislative amendments to protect victims' rights in the criminal justice system could be reintroduced in the 41st Parliament.

Image: © ImageZoo/Corbis.

The *Canadian Charter of Rights and Freedoms* and other human rights legislation set out Canada's human rights protections. Such rights, even if constitutionally protected, are not absolute.

Legislatures can pass laws that limit these rights and freedoms to address what they perceive as pressing societal concerns. To do so, they may explicitly override the Charter in a law, though this is extremely rare, or the government can defend any infringement of a right by way of a justification test before a court or an administrative tribunal.[1] Judges are regularly asked to weigh competing rights when the interests of one person come into conflict with those of another individual or group or with government action.

This overview examines some of the challenges faced by judges and legislators in striking a balance between competing rights and interests in a free and democratic society.

HATE SPEECH AND THE PROTECTION OF VULNERABLE GROUPS

Though freedom of expression may be considered one of the cornerstones of democracy, Parliament has placed limitations on this right in order to protect designated vulnerable groups. The incitement of hatred against people who may be distinguished by colour, race, religion, ethnic origin or sexual orientation is an offence under the *Criminal Code*. Also, hate messages on the Internet are prohibited under the *Canadian Human Rights Act*.

The Supreme Court of Canada has upheld these laws because hate speech, among other things, undermines the Charter values of equality and multiculturalism.[2] In effect, the Court agreed with Parliament that protecting groups targeted by hate propaganda is of greater societal importance than protecting this type of speech. Nevertheless, proponents of free speech continue to seek changes to these laws.

FREEDOM OF RELIGION AND ACCOMMODATION

Recent events illustrate the debate over the extent to which people's religious beliefs and practices should be accommodated when confronted with competing societal interests, such as public safety or the fairness of trials.

After having been denied entry to the Quebec legislature for wearing a kirpan (a ceremonial dagger), some Sikhs have claimed their right to wear their kirpan on religious grounds. By contrast, kirpans are permitted in the federal chambers of Parliament. Also, the Supreme Court of Canada will soon be considering whether a witness has the right to wear a religious veil that covers the face while testifying in court against her alleged abuser, or whether the right of the accused to make a full answer and defence requires that her face be visible to assess her credibility.[3]

PUBLIC SAFETY AND FREEDOM OF ASSEMBLY

In the context of large-scale demonstrations, public safety concerns must be balanced with existing constitutional rights. Security operations may restrict the exercise of these rights provided they are lawful, necessary and proportionate. The G8/G20 summits held in Toronto in June 2010 led to the largest security operations and mass arrests in Canadian history.

Many of the protestors, bystanders and journalists arrested during the summits argued that their constitutional rights to freedom of expression and assembly, as well as their rights against arbitrary detentions and unreasonable searches, were not respected. A number of studies and reviews have been launched to examine the planning and implementation of security operations at the G8/G20 summits, and calls have been made for a public inquiry.

ALLEGED VICTIMS AND ACCUSED PERSONS

In criminal proceedings, alleged victims and accused persons may have competing interests. For example, if an accused person in a sexual assault proceeding seeks access to an alleged victim's confidential records, the court must weigh the right of the accused to present a full defence and the right of the alleged victim to privacy.

Although the criminal justice system provides many protections for the accused to ensure a fair trial, such as the presumption of innocence, the involvement of alleged victims in criminal prosecutions has traditionally been limited. The federal government has introduced a number of changes in this regard over recent decades. These initiatives include allowing victims to provide impact statements at sentencing hearings, and allowing children to testify behind screens. Amendments to the *Corrections and Conditional Release Act* proposed by Bill C-39, which died on the *Order Paper* in the last session of the 40th Parliament, included allowing victims to access more information regarding the post-sentencing status of offenders, such as where they are incarcerated.

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TRAFFICKING IN PERSONS AND HUMAN SMUGGLING

Laura Barnett, Julie Béchard

ISSUE | Human smuggling and trafficking in persons are subjects of increasing concern to border officials and law enforcement agencies.

SYNOPSIS | Trafficking in persons and human smuggling are distinct but overlapping problems that involve complex immigration and exploitation issues. Border and law enforcement officials are actively confronted with the realities of these growing phenomena on the ground, while parliamentarians strive to find legislative solutions.

TIMING | Amendments to the *Criminal Code* with respect to trafficking in persons came into force in 2010. In addition, investigations are ongoing into refugee claims and allegations of smuggling concerning migrants who arrived by ship off the west coast of Canada in 2009 and 2010.

Human smuggling and trafficking in persons are some of the most controversial and challenging modern migration and human rights issues facing the Canadian government today, as demonstrated by intense debate over the issues during the 40th Parliament. Although human smuggling and trafficking in persons are often seen as synonymous, these related activities often involve quite distinct patterns of exploitation and victimization and differ with respect to geographical scope and legal framework.

DEFINITIONS

Human smuggling involves a person who facilitates the illegal entry of a migrant into a country, usually for a fee. The term conjures images of migrants being smuggled across the Canada–United States border, or arriving off Canada's shores by boat. However, human smuggling can also involve the production and sale of false identification or immigration documentation. It is thus an international phenomenon involving illegal migration, and is an issue of concern to border and federal law enforcement officials.

By contrast, trafficking in persons involves the recruitment, transportation and harbouring of a person for the purposes of forced service by means of deception, coercion or debt bondage. Although the image typically associated with trafficking is that of women and children brought into Canada and forced into the sex trade, victims of trafficking also include those exploited as farm, domestic or other labourers. Unlike smuggling, trafficking is not necessarily an international phenomenon: it can occur across provincial as well as national borders, and even between cities.

Of course, the activities of trafficking and smuggling overlap. For example, some illegal migrants pay a fee for their passage and are forced into service to repay their debt. Consenting migrant sex workers may be forced to operate in unexpectedly exploitative conditions. These points of overlap, where irregular migration begins to entail coercive and exploitative service, lead to a blurring of the lines between trafficking and smuggling.

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Sri Lankan migrants arriving on MV *Sun Sea* in 2010.

QUANTIFYING THE PROBLEM

Providing an accurate portrait of trafficking and smuggling in Canada is difficult. Both activities cover a wide range of scenarios, from organized criminal groups that operate transnational networks to small-scale operations that move a few people at a time, whether across national borders or within the country. International smugglers and traffickers often share ethnic ties with those they are moving, while those trafficked domestically are often recruited by acquaintances or through the Internet,[1] or are duped into an exploitative situation or abducted outright. Others are deceived with seemingly legitimate employment contracts or enter into marriages abroad.

Reliable statistics on the scope of smuggling and trafficking are scarce. This is particularly the case with respect to trafficking, given its clandestine nature, the fact that borders do not necessarily need to be crossed, and discrepancies in the interpretation of what trafficking means. In 2005, the RCMP estimated that 800 people were trafficked into Canada each year; more recently, however, law enforcement officials have become reluctant to provide a figure on the extent of trafficking to and from Canada. UN agencies estimate that trafficking in persons generates annual global profits in the range of US$10 billion to US$31.6 billion.[2]

Although smuggling and trafficking are relatively recent concepts in domestic legislation, Canada's history of dealing with irregular migration stretches back to the early 20th century. Today, Canada has been identified as a source, destination and transit country for smuggling and trafficking (often to the United States).[3]

Recent cases highlight the dilemmas facing border and law enforcement officials with respect to smuggling. In 2009 and 2010, two vessels arrived carrying 76 and 492 Sri Lankans claiming refugee status. One person died on the MV *Sun Sea* voyage, and there are concerns that the smugglers might have links to the Tamil Tigers. The federal response was multi-departmental, involving Public Safety Canada, the Canadian Armed Forces, Citizenship and Immigration Canada, and Health Canada.

LEGAL FRAMEWORK

Domestic laws on human smuggling and trafficking in persons flow from Canada's international obligations under a number of UN conventions, including the protocols of 2000 on trafficking and smuggling that supplement the *Convention against Transnational Organized Crime*. The *Immigration and Refugee Protection Act* establishes strict penalties for smuggling and trafficking in sections 117 to 123 (section 117 is specific to smuggling, and section 118 to trafficking). From a criminal law perspective, sections 279.01 to 279.04 of the *Criminal Code* target domestic and international trafficking, with particular emphasis on the trafficking of minors. Victim protection is addressed in the *Criminal Code* with respect to witness protection and restitution, and through a Department of Citizenship and Immigration policy that enables the provision of temporary resident permits to trafficked persons.

GOVERNMENT OF CANADA INVESTMENTS IN PUBLIC INFRASTRUCTURE

Jean Dupuis, Dean Ruffilli

ISSUE | This overview examines the "infrastructure deficit" in Canada and the Government of Canada's response to it through shared-cost infrastructure programs.

SYNOPSIS | Many have argued that Canada is facing a significant infrastructure deficit requiring massive investment to replace or rehabilitate aging public infrastructure. Since 1993, the Government of Canada has introduced a series of shared-cost infrastructure programs, but there is no agreement on their impact on the infrastructure deficit.

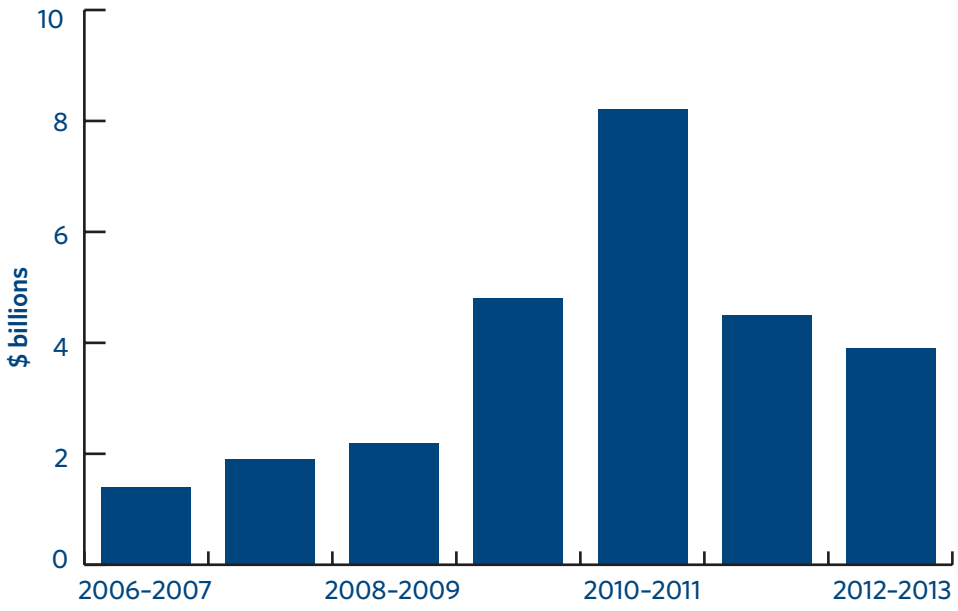
TIMING | The end of many federal infrastructure programs is approaching. For example, the deadline for the completion of projects under the Infrastructure Stimulus Fund is 31 October 2011, while the component programs of the *Building Canada* plan will end in 2014.

Well-maintained public infrastructure – from roads, public transit systems, environmental and water works, and recreational and cultural assets, to information and connectivity systems such as broadband infrastructure – is essential for economic growth and the well-being of Canadians. However, after decades of continuous use, much of Canada's public infrastructure is approaching the end of its useful life and will need to be repaired or replaced.

The evidence suggests that all levels of government have been underinvesting in infrastructure for many years. Competing priorities, particularly in health and education, have squeezed federal and provincial budgets, while local governments have faced funding pressures arising from their reliance on revenues generated through property taxes. At the same time, infrastructure projects have become increasingly costly as a result of increases in the prices of raw materials.

Although a growing infrastructure "gap" or deficit is widely recognized, there is little agreement as to whether any progress is being made to address the problem. For example, the Federation of Canadian Municipalities has spoken of a $123 billion municipal infrastructure deficit that persists in spite of nearly two decades of federal infrastructure investment.

Annual Federal Infrastructure Spending



Source: Figure prepared by the Library of Parliament using data from *Public Accounts of Canada* and Canada's Economic Action Plan.

GOVERNMENT OF CANADA INFRASTRUCTURE PROGRAMS

Since 1993, the Government of Canada has attempted to address the infrastructure deficit through a series of shared-cost programs. Most are temporary measures that have a fixed budget and predetermined end-date and require the financial participation of all three levels of government. Most of these programs reserve a significant portion of the federal funds for local infrastructure projects such as road improvements, public transit, and water and waste-water projects.[1]

Other federal programs target specific infrastructure classes. Examples include improvement programs for border crossings and their approaches, physical infrastructure and security of trade corridors, and public transit infrastructure.[2] Other programs, such as the former Canada Infrastructure Works Program and, more recently, the Infrastructure Stimulus Fund, are intended to provide rapid economic stimulus during and after economic downturns through the cost-shared repair, improvement and expansion of public infrastructure.

One program, the Gas Tax Fund, provides stable funding directly to municipalities to support improvements to local infrastructure. In its 2008 budget, the federal government announced that this fund would become permanent beyond 2014, contributing $2 billion annually.

THE WAY FORWARD

For 2007 through 2014, the federal government has committed nearly $40 billion in funding under the component programs of the *Building Canada* plan and the Economic Action Plan to support improvements to Canada's public infrastructure. As most of these programs are cost-shared with other levels of government, they will likely leverage total investments up to three times greater than the amounts contributed by the Government of Canada. However, as noted earlier, there is still uncertainty as to the extent of progress in addressing Canada's infrastructure gap.

Going forward, it will be difficult for all levels of government to continue to address the infrastructure gap as they wrestle with budget deficits and competing priorities. This situation will be exacerbated by the end of federal stimulus funding in late 2011 and the end of the component programs of the *Building Canada* plan in 2014. At present, only the Gas Tax Fund is confirmed to continue beyond 2014.

It is also likely that, as governments struggle to balance competing priorities in an era of deficit reduction, other mechanisms such as public-private partnerships (P3) may become increasingly attractive. In its 2008 budget, the Government of Canada introduced a $1.25 billion P3 Canada Fund and a Crown corporation (PPP Canada) to support the development of the P3 sector in Canada. However, few projects arising from these initiatives have been announced to date.

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REBALANCING THE EMPLOYMENT INSURANCE OPERATING ACCOUNT

André Léonard

ISSUE | The Employment Insurance Operating Account, which was created in 2009, incurred several annual deficits in the early stages.

SYNOPSIS | The Account is expected to post deficits from 2009 to 2012. Those deficits will be offset by surpluses from 2013 to 2015. The Account should be in cumulative balance around 2015.

TIMING | The government announced in September 2010 and again when the March 2011 Budget was tabled that it planned to hold consultations on the mechanism for setting Employment Insurance premium rates. Moderate increases in premium rates are anticipated in the next few years: the Canada Employment Insurance Financing Board's announcement regarding 2012 premium rates is expected in November 2011. The government has already limited those increases to 0.10% by order in council.

The new Employment Insurance Operating Account created on 1 January 2009 by an amendment to the *Employment Insurance Act* is managed by the Canada Employment Insurance Financing Board. The Board's mandate is to set premium rates for the coming year and to manage temporary surpluses in the Account. These surpluses can be used only to offset future or past deficits in the Account.

Each year, the Board is required to calculate the break-even rate. This theoretical rate ensures that premiums in the coming year will be sufficient to pay benefits, cover any deficits incurred since the creation of the Account in 2009, and preserve the market value of the Account's reserve. This $2 billion reserve should be paid into the Account by the government and be used to keep premium rates somewhat stable.

The government may from time to time transfer funds from the Consolidated Revenue Fund (general government revenue) to the Account in order to finance special measures. It was in this way that an amount equal to the cost of certain temporary increases in benefits provided for in the 2009 Budget was transferred from the Fund to the Account.

RETROSPECTIVE AND PROJECTIONS

Because of rising unemployment rates in 2009, the year the Account was created, there was a deficit in that year, and deficits are projected for 2010 and 2011 (see table). The break-even rate calculated for 2011 was 2.65% for employees outside Quebec, up significantly from the 2010 premium rate (1.73%).[1] However, the Board cannot recommend an increase greater than 0.15%.

Actual and Projected Budget Balance in the Employment Insurance Operating Account, 2009–2011 ($ billions)

	ACTUAL 2009	PROJECTED 2010	PROJECTED 2011
Employment Insurance benefits	21.0	20.6	19.2
Administration costs and adjustments	2.0	2.0	1.8
Net expenditures	**23.0**	**22.6**	**21.0**
Employment Insurance premiums	16.9	17.6	18.8
Funding for Budget 2009 measures	1.2	1.4	0.3
Total revenue	**18.1**	**19.0**	**19.1**
Annual surplus (deficit)	**(4.9)**	**(3.6)**	**(1.9)**
Cumulative surplus (deficit)	**(4.9)**	**(8.5)**	**(10.4)**

Source: Canada Employment Insurance Financing Board, *2011 Employment Insurance Premium Rate*, 12 November 2010, p. 17.

In September 2010, an order in council limited the increase in the premium rate for employees to 0.05% in 2011 and 0.10% in subsequent years so that the economic recovery would not be weakened.

The Board has projected an annual deficit of approximately $1.9 billion in 2011. This projected improvement relative to the 2009 deficit ($4.9 billion) is mainly attributable to a $1.9 billion increase in premiums and a $1.8 billion decrease in benefits.

The Office of the Parliamentary Budget Officer forecasts a small deficit in 2012 ($193 million), followed by annual surpluses beginning in 2013; the accumulated deficit in the Account should be eliminated by 2015.[2] It will depend on how strong the recovery is and the anticipated future increases in premium rates.

Contrary to its initial mandate, the Board will not have to pay into the Fund interest on deficits, and if there is a surplus, the Fund will not have to pay the Board interest. This policy means that the Account will return to cumulative balance sooner.

CONSULTATIONS?

The current mechanism for setting premium rates compelled the Board to recommend a maximum increase in the rates because of a deficit caused by the recession, a move that is not always desirable at the start of a recovery.

For this reason, the government announced in September 2010 and again when the March 2011 Budget was tabled that it planned to hold consultations on the mechanism for setting Employment Insurance premium rates, primarily to make them more stable and predictable.

CONTEXT: FINANCING OF EMPLOYMENT INSURANCE

Employee and employer premiums cover 5/12 and 7/12 of the Employment Insurance program respectively. In 2011, the premium rate for employees living outside Quebec is 1.78%. Employees pay a maximum of $786.76 if their earnings are equal to or greater than the maximum amount of insurable earnings ($44,200), which is the average amount of earnings in Canada.

The premium rate for employees who live in Quebec is lower (1.41%) because maternity and parental leave benefits are paid under a provincial program.

Since 2010, self-employed workers living outside Quebec can get special benefits (parental, maternity, sickness and compassionate care) if they wish. They pay the same rate as employees. Self-employed workers in Quebec are eligible for sickness and compassionate care benefits.

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TAX AVOIDANCE AND EVASION: CHASING THE TAX DOLLARS

Sylvain Fleury, Mark Mahabir

ISSUE | Like taxpayers in other jurisdictions, some Canadian taxpayers engage in tax avoidance, which is generally legal, or tax evasion, which is illegal.

SYNOPSIS | Tax revenue is an important source of income for governments, and while tax avoidance is generally legal, tax evasion is not. Tax avoidance and evasion through the under- or non-reporting of income has led to various federal measures designed to obtain information about domestic and foreign income earned by Canadians.

TIMING | With deficit-reduction as a priority, recent trends suggest that governments may more frequently undertake tax-shelter-related audits and reassessments to generate more revenues.

To protect the integrity of Canada's tax base, taxpayers must report and pay their taxes on both domestic and foreign income. This principle applies to individuals, trusts and corporations who are "Canadian residents" under the *Income Tax Act*.

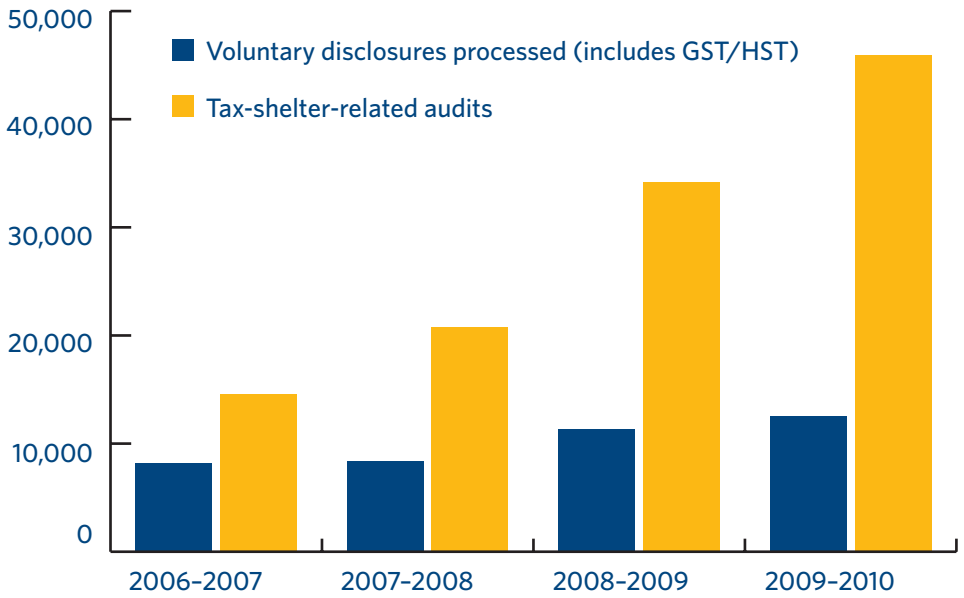
Taxpayers, however, can minimize their tax burden in various ways. One is "tax avoidance," which involves using specific transactions to lower the amount of tax payable as a result of a technical reading and application of the law; in some cases, the tax benefit may later be denied by the courts. Another is "tax evasion," which is always illegal and involves the non-declaration or falsification of tax-related information.

CANADA'S TAX BASE

In 2009–2010, federal revenues totalled $218.6 billion. Tax revenues contributed 82% of this total, or $180.2 billion.[1] With a combined value of close to $134 billion, personal and corporate income tax constituted the major source of tax revenue.

Because both tax avoidance and tax evasion reduce revenues, the Canada Revenue Agency (CRA) monitors compliance using various measures. In the annual report it submitted to Parliament in January 2008, the CRA indicated that it had issued 14,600 reassessments related to $1.4 billion in additional taxes.[2]

Number of Voluntary Disclosures Processed and Tax-Shelter-Related Audits Conducted by the Canada Revenue Agency, 2006–2010 Fiscal Years



Source: Canada Revenue Agency, *Annual Report to Parliament*, various years.

Penalties for tax evasion include fines between 50% and 200% of the amount of tax evaded and/or imprisonment for up to two years.[3] However, the CRA's Voluntary Disclosures Program allows taxpayers to correct inaccurate or incomplete tax-related information, or to disclose information they omitted to report to the Agency, in some cases without facing prosecution or fines.

CANADA'S TAX SYSTEM

Various factors in Canada's tax system contribute to making avoidance and evasion easier:

- **The tax system itself, which is based on self-assessment.** Taxpayers compute their income tax for a given year and file a return with the CRA. The CRA may verify a taxpayer's assessment through an audit and, on the basis of its determination, may issue a reassessment. Some taxpayers provide incorrect or incomplete information on their returns and, because of the nature of the system, may never be audited. Self-assessment reduces the costs involved in managing the system, but it also makes tax avoidance and tax evasion easier.
- **The complexity of tax legislation.** Over the years, the *Income Tax Act* has become increasingly complex. This complexity has facilitated tax avoidance and evasion in some cases, and has led to confusion in other cases.
- **Incomplete harmonization of federal and provincial tax legislation.** Taxpayers can make different tax decisions at the federal and provincial levels, which sometimes results in lower taxes.

FOREIGN INCOME

As described below, the reporting of foreign income is one area where compliance is difficult to ensure.

Individuals, trusts and corporations can claim a Canadian tax credit for foreign taxes paid. As well, corporations can earn foreign income without paying taxes in Canada, provided the foreign jurisdiction has a tax treaty with Canada.

Canadian individuals, corporations, trusts and partnerships are required to report whether they own foreign property with a total value exceeding C$100,000 in a given taxation year. In addition, certain financial intermediaries must report inbound and outbound capital transfers of C$10,000 or more, as well as other activities, to the Financial Transactions and Reports Analysis Centre of Canada.

The avoidance or evasion of taxes through deposits of income in undeclared foreign bank accounts, the transfer of capital and/or the earning of foreign income may involve jurisdictions that have been classified by the Organisation for Economic Co-operation and Development (OECD) as offshore financial centres. These centres may be used for purposes that are legitimate, such as to accumulate income for investment in another jurisdiction, or illegitimate, such as to conceal assets and income.

To date, banking secrecy laws in foreign jurisdictions, including offshore financial centres, have hampered the CRA's efforts to determine the foreign income on which Canadian taxpayers should be paying taxes. At the 2009 G20 summit, leaders agreed that these nations and other jurisdictions should conclude tax information exchange agreements.[4] To date, Canada has signed 11 such agreements.[5]

CONCLUSION

The CRA's tax-shelter-related audits tripled from 2006–2007 through 2009–2010 (see figure). In the future, the CRA's activities may continue to be hampered by constraints related to the context of Canada's tax system. The advent of tax information exchange agreements with other jurisdictions may, however, provide the CRA with more information to determine the taxes payable on the foreign income of Canadian residents.

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DEFICITS AND SURPLUSES: WHO OWES HOW MUCH TO WHOM?

John Bulmer, Édison Roy-César

ISSUE | The financial positions of Canada's four economic sectors – household, corporate, government and foreign – are interrelated and affect policy decisions.

SYNOPSIS | Since the onset of the global financial and economic crisis in 2008, the household and government sectors of Canada's economy have had a deficit. The corporate sector has had a surplus since 2000, while the rest of the world has had a trade surplus with Canada since 2009.

TIMING | As policy-makers decide on the actions that are needed to continue the economic recovery and to promote growth, the financial position of each of Canada's sectors will influence the measures that can be successfully implemented.

Since the onset of the recent global financial and economic crisis, particular attention has been paid to debt, deficits and surpluses, both internationally and domestically: which nations and sectors have them, what size are they, and for how long will they last? Answers to these questions have influenced the policy decisions taken by governments, central banks and others in responding to the crisis and assisting the economic recovery.

Each of Canada's four economic sectors – household, corporate, government and foreign – has a role to play as our economy continues to recover, and the importance of its role will be influenced by the nature, size and duration of its deficit or surplus. With accumulated deficits over time, the debt of Canada's households and governments has been a focus.

As decision-makers worldwide continue to take action, the relative financial position of each economic sector is a consideration. For example, the contributions to recovery that can be made by increasingly indebted households as well as by governments facing reduced tax revenues and higher spending requirements may be considered not only in their own right but also in the context of the other two sectors in an integrated system: the corporate and foreign sectors.

In particular, borrowing by one sector necessarily implies lending by at least one other sector, and a net deficit in any one sector – with expenditures exceeding income – necessarily means a net surplus in at least one of the remaining sectors – with income exceeding expenditures.[1] As well, over any period, the four sectors' combined deficit is equal to their combined surplus.

HOUSEHOLD SECTOR

Households are economic participants as consumers and employees. The sector, which includes unincorporated businesses, tends to reduce its borrowing and increase its saving during a recession, recognizing that households that face recession-related unemployment may be limited in their ability to borrow and save while households where members remain employed may save more due to a fear of potential unemployment; the reverse occurs when the economy recovers. This trend was evident during the recent global financial and economic crisis.

Since 2002, the Canadian household sector has had a deficit each year. Moreover, household debt as a percentage of disposable income has risen over time – from 89% in March 1990 to 149% in December 2010,[2] compared to 148% for U.S. households.[3]

CORPORATE SECTOR

As economic participants, corporations produce goods and services and employ households. In most years from 1961 to 1999, investment and other expenditures by the sector, which includes Crown corporations, exceeded income. Since 2000, the sector has had a surplus each year. Consequently, following almost four decades of deficits, the sector has started to accumulate financial assets and/or begun to repay existing debt. Reductions in the federal corporate income tax rate since 2000, which

have allowed corporations to retain a greater proportion of taxable income, may have enhanced the sector's ability to save.

GOVERNMENT SECTOR

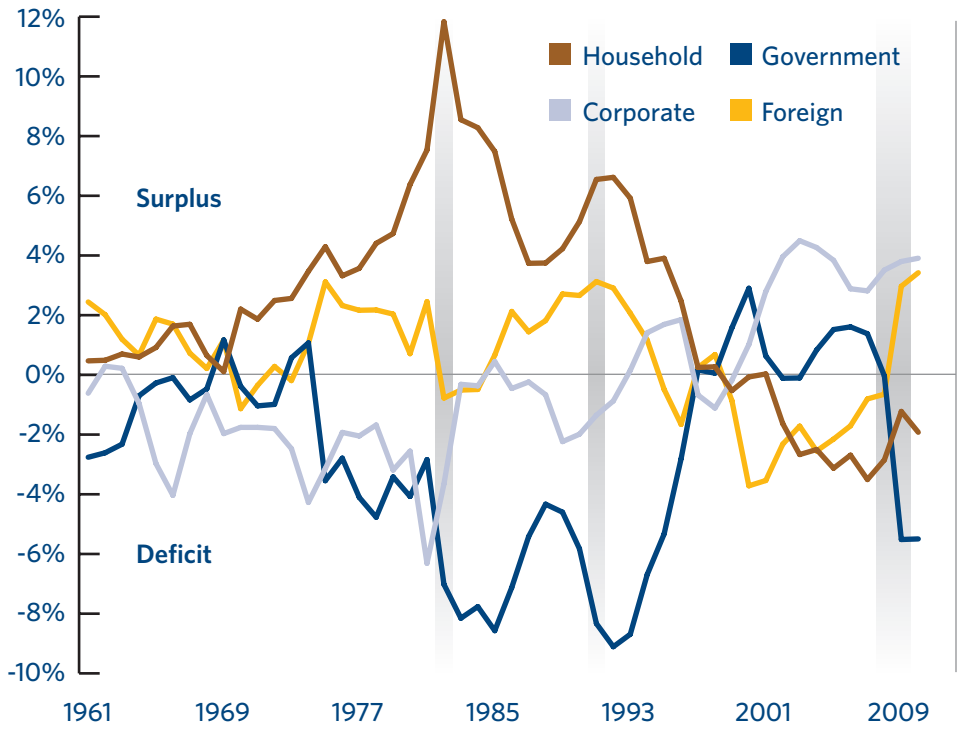
In the economy, governments provide public services, collect taxes, purchase goods and services, and transfer funds to individuals and other levels of government. Unlike households, governments tend to increase their borrowings and reduce their savings during a recession, as unemployment rises, tax revenues fall and transfers to individuals increase; the reverse occurs when the economy recovers. The government sector followed this trend during the recent global financial and economic crisis.

In 2008, when the global financial and economic crisis began and the Canadian economy entered a recession, the sector had a relatively small deficit. In 2009 and 2010, the sector had relatively larger deficits, as tax revenues declined, transfers to individuals increased and economic stimulus measures were implemented.

FOREIGN SECTOR

The foreign sector plays a role in our economy as a supplier and a purchaser of goods and services; it also plays a role in investment. Prior to 1995, the foreign sector's balance, which is measured in terms of the value of flows of goods and services between Canada and other nations, was highly variable from year to year. From 1995 to 2008, with the exception of relatively small surpluses in 1997 and 1998, the rest of the world had a trade deficit with Canada, because the value of the goods and services exported by Canada exceeded the value of those it imported. Following the global financial and economic crisis that started in 2008, however, the rest of the world has had a trade surplus with Canada.

Annual Surplus/Deficit of the Household, Corporate, Government and Foreign Sectors of Canada's Economy, as a Percentage of Gross Domestic Product, 1961–2010



Source: Figure prepared by the Library of Parliament using data from Statistics Canada.
(Grey bars represent a year-over-year decline in real gross domestic product.)

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TAX BURDENS AND REVENUE SOURCES: CANADA IN AN INTERNATIONAL CONTEXT

Brett Stuckey, Adriane Yong

ISSUE | Canada's relative tax burden and the importance of domestic tax bases can influence decisions by businesses, individuals and policy-makers.

SYNOPSIS | Canada's 2008 overall tax burden – tax revenues as a percentage of gross domestic product – was lower than the Organisation for Economic Co-operation and Development (OECD) average. While Canada's personal income tax burden ranked above the OECD average, burdens for corporate income tax, social security contributions and consumption taxes were lower.

TIMING | While Canada's relative tax burden and tax sources are of ongoing policy interest, consideration of taxation – rates, revenues and bases – is generally heightened when the federal budget is presented to Parliament each year.

Tax burdens influence decisions about production, consumption and savings. Internationally, part of a country's appeal to potential investors is its relative tax burden. Domestically, the comparative importance of income and consumption taxes, as well as social security contributions, affect investment, labour market and other decisions by businesses and individuals. With a focus on competitiveness, growth and economic recovery, tax burdens may be of interest as policy-makers identify the conditions needed for Canada to be an attractive location in which to work and do business.

"Tax burden" describes the amount of personal income, corporate income and consumption taxes, as well as social security contributions, paid in a country. The Organisation for Economic Co-operation and Development (OECD) makes international comparisons by defining "tax burden" as tax revenues as a percentage of gross domestic product (GDP).

IMPORTANCE OF TAX BASES

Each tax base's contribution to tax revenues varies across countries and over time.

In 2008, consumption taxes were the most important contributor to tax revenues in OECD countries,[1] followed by personal income taxes and social security contributions, which were equally important; corporate taxes made the least contribution. The relative importance of personal income taxes and social security contributions has changed over time, with personal income taxes falling and social security contributions rising. The contribution made by corporate income taxes to tax revenues in OECD countries has been steady since 1965, while consumption taxes have declined in importance.

This situation can be contrasted with Canada. In 2008, personal income taxes were the most important source of tax revenues, followed by consumption taxes, social security contributions and corporate income taxes. The contribution of corporate income and consumption taxes has fallen over time.

In 2008, Canada's overall tax burden, at 32.3%, ranked 11th, below the OECD average of 34.8%. Sweden and Denmark had a burden above 45%, while 10 countries – including Australia and the United States – had a burden below 30%. Between 1965 and 2008, Canada's overall tax burden increased from 25.7% to 32.3%.

PERSONAL INCOME TAXES

In 2008, Canada's personal income tax burden, at 12%, ranked 26th, above the OECD average of 9%.

Until 2008, personal income taxes were the primary source of tax revenues, comprising more than 30% of such revenues in the mid-1980s; their significance has been declining since the 1990s, coincident with a rise in the proportion of social security contributions. In 2008, for OECD countries, these two sources each accounted for 25% of tax revenues. Personal income taxes in Canada represented 37.2% of tax revenues, above the OECD average of 25%. Australia, the United States, New Zealand and Denmark had a higher proportion than Canada.

CORPORATE INCOME TAXES

In 2008, Canada's corporate income tax burden, at 3.3%, ranked 17th, below the OECD average of 3.5%.

Between 1965 and 2008, the contribution of corporate income taxes to revenues was relatively steady in OECD countries, ranging from 8% to 10%. Over the same period, the contribution of Canada's corporate income taxes decreased from 14.9% to 10.4%, above the 2008 OECD average of 10.1%. Norway and Australia had proportions above 20%, while 18 countries had proportions below 10%, the lowest being Germany.

SOCIAL SECURITY CONTRIBUTIONS

In 2008, Canada's tax burden associated with social security contributions, at 4.8%, ranked fifth, below the OECD average of 9%.

The significance of social security contributions, or "payroll taxes," as a percentage of tax revenues in OECD countries increased from 17.6% of such revenues in 1965 to 25.3% in 2008. In 2008, Canada's social security contributions were responsible for 14.7% of tax revenues, below the OECD average of 25.3%. Mexico, Iceland, Chile and Denmark had lower proportions than Canada.

CONSUMPTION TAXES

In 2008, Canada's consumption tax burden, at 7.6%, ranked fifth, below the OECD average of 10.8%.

Consumption taxes include excise, specific sales and value-added taxes, such as Canada's Goods and Services Tax/Harmonized Sales Tax. Although value-added taxes are a popular and growing source of revenues in member countries, the contribution of combined consumption taxes to tax revenues in OECD countries fell from 38.4% in 1965 to 31.7% in 2008, partly due to reduced trade barriers, including those relating to some excise taxes and duties.

While consumption taxes were responsible for 40.5% of Canada's tax revenues in 1965, a proportion that was above the OECD average, these taxes contributed 23.6% in 2008, below the OECD average of 31.7%. The United States, Japan and Switzerland had lower proportions than Canada.

Personal and Corporate Tax Burdens of Selected OECD Countries (Tax Revenues as a Percentage of Gross Domestic Product)

PERSONAL INCOME TAX			CORPORATE INCOME TAX		
RANK	COUNTRY	PERCENT OF GDP	RANK	COUNTRY	PERCENT OF GDP
1	Slovak Republic	2.8%	1	Turkey	1.8%
17	**OECD Total**	**9.0%**	2	United States	1.8%
22	United States	9.9%	**17**	**Canada**	**3.3%**
23	Australia	10.2%	**22**	**OECD Total**	**3.5%**
24	United Kingdom	10.7%	24	United Kingdom	3.6%
25	Italy	11.6%	25	Italy	3.7%
26	**Canada**	**12.0%**	31	Australia	5.9%
32	Denmark	25.2%	32	Norway	12.5%

Source: Organisation for Economic Co-operation and Development, *Revenue Statistics, 1965–2009, 2010 Edition*, 15 December 2010. (Data were available for 32 OECD countries.)

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CANADIAN INTERNATIONAL MILITARY OPERATIONS IN THE 21ST CENTURY

Martin Auger

ISSUE | What does the future hold for Canadian international military operations in the 21st century?

SYNOPSIS | The international security environment is unpredictable and volatile. Canada is responding by investing in its military capabilities and being increasingly involved in robust multinational military interventions abroad.

TIMING | The Canadian Forces is currently engaged in combat operations in Afghanistan and Libya. After a decade in Afghanistan, the Canadian mission is in transition, shifting from a combat to a non-combat role this year. Simultaneously, Canadian CF-18 fighters are engaged in Libya on their first combat operation since Kosovo (1999).

In the past, the Canadian military has been required to be flexible and prepared to meet a range of contingencies, from peacekeeping and peace enforcement to counter-insurgency operations and full-scale war. But what does the future hold for Canadian international military operations in the 21st century?

The international security environment remains unpredictable and volatile. The number of armed conflicts has increased by 25% worldwide since 2003.[1] This is mostly due to a rise in intrastate conflicts in many regions of the developing world. Although the threat of large-scale conventional war now appears remote, complex and lengthy low-intensity conflicts involving ill-defined and non-state forces are widely expected to foster insecurity around the world.

Additionally, new and complex threats stemming from failed and failing states; transnational criminal and terrorist networks; political, ethnic and religious extremism; the proliferation of weapons of mass destruction; global power shifts; climate change and environmental degradation; international competition for energy and for scarce resources; and global demographic growth will continue to strain international relationships and may trigger conflict in several regions. How will Canada continue to meet these security challenges in the 21st century? How will it choose to protect its interests?

INVESTING IN MILITARY CAPABILITIES

Over the last decade, Canada and its allies have responded to the changing international security environment by investing in their military capabilities. Canada's defence budget was increased significantly, from around $11 billion in 2001–2002 to about $21 billion by 2010–2011. Canada is currently the 13th largest military spender in the world and the 6th largest among NATO members,[2] even though Canadian defence spending is below the NATO target of 2% of GDP.

The Canadian Forces is also undergoing a major recapitalization program. Billions of dollars have been spent on various defence procurement projects, and more are planned. Efforts have been launched to replace and refurbish defence infrastructure and to increase the size of the Canadian Forces to 100,000 personnel. These types of investments have strengthened some of the Canadian Forces' operational capabilities.

MULTINATIONAL MILITARY OPERATIONS

Canada and its allies have also responded to the changing international security environment by becoming increasingly involved in robust multinational military interventions abroad. Although Canada's participation in peacekeeping missions has declined over the last decade, as a member of international organizations such as the United Nations and military alliances such as NATO, Canada has participated in a number of complex and challenging international military operations. In 2010 and 2011, for example, the Canadian Forces made significant contributions to the disaster relief operation in Haiti, to the multinational armed intervention in Libya, and to the international campaign to enhance maritime security in the Arabian Sea, the Persian Gulf and the waters around the Horn of Africa.

CANADA'S MISSION IN AFGHANISTAN

The war in Afghanistan remains Canada's main military effort. This ongoing mission is the largest and most dangerous combat operation undertaken by the Canadian military since the Korean War.

It is estimated that, by the end of 2011, approximately 41,000 Canadian Forces personnel will have served in Afghanistan since the start of the mission in 2001. There are currently more than 2,900 Canadian Forces personnel in Afghanistan. As of 1 April 2011, 155 Canadian soldiers had been killed and more than 1,800 had been wounded. Canada has sustained, after the United States and the United Kingdom, the third largest number of fatalities among the 48 International Security Assistance Force (ISAF) countries in Afghanistan.

Although Canada's combat mission is scheduled to end in 2011, up to 950 trainers and support personnel will continue to be deployed until 2014 to train Afghan National Security Forces. The mission in Afghanistan has had a far-reaching impact on the Canadian Forces and its capabilities, enhancing its state of readiness and its combat experience, not to mention creating a new generation of veterans.

Robust multinational operations such as the Afghanistan mission can be complex, lengthy, dangerous and costly. They also involve a high degree of interoperability with allied forces and often result in combat and casualties. Although the framework of future deployments remains unknown, Canada will continue to face a range of military challenges in an unpredictable and volatile international security environment.

Image: Corporal Shilo Adamson, Canadian Forces Combat Camera/© 2010 DND-MDN Canada.

Canadian soldiers on patrol outside a small village in Panjwa'i District in Afghanistan, 21 September 2010.

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CANADA'S ROLE AND INFLUENCE INTERNATIONALLY

Allison Goody, James Lee

ISSUE | What is Canada's role and influence in a world characterized by significant political, economic and institutional changes?

SYNOPSIS | Canada's global influence is partly the product of its economic, military, development and diplomatic capabilities. But understanding Canada's role also requires taking account of other factors, including the issue at hand and domestic and international activities not traditionally considered part of "foreign policy."

TIMING | Canada is required to continually confront the question of its international role and influence in a rapidly changing world.

Canada in the world.

Debates about Canada's role and relative influence in world affairs are not new. These issues, however, are arguably more important – and complex – today in light of global power shifts; intensified competition among states for access, influence and prosperity; and the struggle of multilateral institutions to both reflect and deal with these developments.

Understanding Canada's role and place in the world today requires an assessment of several dimensions and factors.

TRADITIONAL DIMENSIONS

A country's influence in world affairs has traditionally been gauged by its economy, military, diplomacy and development assistance.

The Canadian economy is approximately the ninth largest in the world[1] and has navigated the global financial and economic crisis that began in 2008 quite well. Like other advanced economies that benefit from trade and foreign investment, and that are deeply integrated in the world economy, Canada must ensure that the domestic conditions are in place to sustain its international commercial competitiveness. The need to enhance two key areas – productivity and innovation – is often cited in this regard.

Canada's military, although relatively small at just over 68,000 regular personnel plus 24,000 reservists, is well respected among its allies. In recent years, the Canadian Forces has made a significant contribution to the international mission in Afghanistan, as well as operations in Haiti and Libya, and the anti-piracy maritime efforts off the Horn of Africa. At the same time, Canada's deployments to United Nations peacekeeping missions have declined over the decades, and the country is now ranked 51st among those contributing to such missions.[2]

Diplomacy is the responsibility of the Department of Foreign Affairs and International Trade (DFAIT), which for many years was at the centre of defining and projecting Canada's foreign policy. Given profound changes across policy sectors in the context of globalization, more than 20 federal government departments and agencies are now active internationally. Simultaneously, central agencies are increasingly playing a more active role in coordinating Canada's international policies. Consequently, DFAIT's external orientation has increasingly given way to a focus on forging coherence across Canada's diplomatic efforts in different policy areas.

Canada's development assistance budget is the eighth largest among donor countries that provide such assistance, but 14th when the contributions are taken as a percentage of gross national income.[3] In the context of an increasing international focus on aid effectiveness and long-standing concerns about the ability of the Canadian International Development Agency to plan and deliver development assistance effectively, several policy initiatives have been undertaken to increase the efficiency and impact of Canadian aid. These have included streamlining the number of aid recipients and priority sectors, and untying aid, so that it need not be spent for the procurement of donor or specified-country goods, services, or technical expertise.

NEW DIMENSIONS

While these traditional metrics are useful, understanding Canada's role and influence in world affairs necessitates broader consideration of other factors. For instance, state power takes different forms and employs different tools, each of whose effectiveness depends on the situation. Power can be based on "hard" elements – the ability to compel and coerce – and "soft" elements – the ability to persuade and attract. Other factors include the degree to which states are linked with groupings of other governments, institutions, companies, civil societies and diaspora.

Using these lenses, the importance of Canada in spheres not necessarily considered part of "foreign policy" is amplified. The country is a world leader in mining and the extractive industries. It is a significant agricultural producer in a world facing food insecurity, and a leading exporter of energy in a world thirsting for secure energy supplies.

To many, Canada serves as an institutional model, in light of its federalist structure, public education system and merit-based public service. It can also be considered a societal model of stability, encompassing two official languages and a diverse citizenry.

All told, the extent of Canada's role and relative influence will be shaped by the issue at hand, the package of capabilities it can bring to bear, relationships it has developed, and the attention it devotes to an issue. There are situations where Canada's expertise is noted, its input sought and its commitments substantial, such as deliberations on banking regulations or the reconstruction of Haiti. Canada is less present, however, in cases of global decision-making where it has fewer international connections or potential levers of influence, such as the management of nuclear ambitions in Iran and North Korea, or currency policy in China.

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CANADA'S PROVINCES AND INTERNATIONAL TRADE AGREEMENTS

Alexandre Gauthier, Simon Lapointe

ISSUE | Provincial participation in Canada's international trade negotiations is changing to reflect provincial implementation of the agreements.

SYNOPSIS | The provinces have long been limited to an advisory role in federal negotiations leading to international trade agreements. However, they are being called on to play an increasingly greater part as more negotiations involve areas of provincial jurisdiction.

TIMING | Close to a dozen trade agreements are currently being negotiated, increasing instances where provinces could be involved.

Canada's provinces[1] are increasingly affected by and interested in the international agreements signed by the federal government, particularly since trade has expanded exponentially in recent decades and the agreements have become more comprehensive.

A MATTER OF JURISDICTION

Canada's Constitution gives the federal government sole jurisdiction over the regulation of trade and commerce. The provinces have long been limited to an advisory role during both multilateral and bilateral international trade negotiations. However, they are playing an increasingly important part. This is coming about because commitments are often made in areas of shared federal–provincial jurisdiction or in areas of provincial jurisdiction, where details on their implementation in the provinces have not been specified.

Government procurement, for example, is likely to have a significant provincial and municipal dimension and can be an integral part of Canada's international agreements. Without greater provincial involvement in negotiations, implementing and meeting certain commitments in these agreements could be difficult.

To limit its liability, Canada usually includes what is known as a "federal clause" in agreements that involve one or more areas of provincial jurisdiction. This clause informs the parties that the Government of Canada may have difficulty implementing some of the commitments in the agreement because provincial cooperation must first be secured. Today, however, simply including this type of clause is not enough to meet the demands of some trading partners.

THE PROVINCES AND RECENT NEGOTIATIONS

The provinces have been called upon to play a greater role in current or recently concluded trade negotiations, as in the case of the *Agreement Between the Government of Canada and the Government of the United States of America on Government Procurement*, signed in 2010. Under its terms, the provinces and some Canadian municipalities agreed for the first time to allow U.S. firms to bid on provincial or municipal procurement contracts, on a temporary basis. Provincial participation and consent were essential to the signature of this agreement.

Another example is the comprehensive economic and trade agreement currently under negotiation between Canada and the European Union. As the European negotiators want to include government procurement at the provincial and municipal levels, the provinces are now playing a more active role in discussions. It now seems certain that the agreement cannot be concluded without their consent.

A MATTER OF LIABILITY

The recent expropriation by Newfoundland and Labrador of AbitibiBowater's assets in that province and the announcement that the federal government would pay the company $130 million in settlement raises an interesting issue concerning provincial implementation of trade agreements. Since Newfoundland and Labrador is not a signatory to the *North American Free Trade Agreement* (NAFTA), AbitibiBowater challenged the provincial government's move by filing a claim for federal compensation under Chapter 11 of NAFTA. It should be pointed out that Newfoundland and Labrador did not have to compensate either the company or the federal government.

Like NAFTA, the foreign investment promotion and protection agreements and most of the trade agreements that Canada has ratified include a dispute settlement mechanism enabling investors to bring a claim directly against a NAFTA party. The AbitibiBowater example demonstrates that since the provinces are not signatories to these agreements, it falls to the federal government to defend not only its own actions but also those of the provinces and to compensate investors when so ordered.

The future agreement between Canada and the European Union may include a section on investment protection similar to the provisions of NAFTA. With the provinces participating actively in these negotiations, there may be an opportunity for them and the federal government to agree on an internal mechanism for sharing liability in the event of a dispute.

Image: © Ocean/Corbis.

Trade in goods and services impacts both businesses and consumers worldwide.

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CANADA–EUROPEAN UNION ECONOMIC AND TRADE NEGOTIATIONS: THE AGRI-FOOD SECTOR

Aïcha Coulibaly

ISSUE | An agreement with the European Union, the world's biggest common market, would have a major impact on Canada's agri-food sector.

SYNOPSIS | There are tariff and non-tariff barriers in the agri-food sector, both in Canada and in the European Union. Eliminating those barriers would, in the long run, boost Canadian exports. However, a number of sensitive issues for which formal offers have not yet been exchanged are still unresolved.

TIMING | There have been seven rounds of negotiations since 6 May 2009; the seventh took place in April 2011 in Ottawa. An eighth round is expected to proceed in July 2011 in Brussels. The negotiators anticipate reaching an agreement before the end of 2011.

In May 2009, Canada initiated a round of negotiations aimed at concluding a comprehensive economic and trade agreement with the European Union (EU). The agreement would give Canadian exporters access to a market of more than 500 million people, a market with a gross domestic product worth $16.7 trillion in 2010.[1] The elimination of tariff and non-tariff barriers could, in the long run, boost Canadian agri-food exports from $2.7 billion to $3.2 billion.[2] A number of hurdles must still be overcome before an agreement can be signed.

TARIFF AND NON-TARIFF BARRIERS IN THE TWO MARKETS

In recent years, the average duty Canada applied to agricultural products has been 21.9%, whereas the duty on non-agricultural commodities has been 3.5%.[3] Imports of products under supply management (milk, chicken, eggs, turkeys and hatching eggs) have been subjected to high customs duties, with a 159.1% duty applied on average.

The EU, meanwhile, has imposed high duties on beef (142%), pork (between 32% and 70%), fruits and vegetables (31.8%), fish and seafood (12.5%), and wheat and oats. By comparison, average duties on commodities have been 2.2%.

On the subject of non-tariff barriers, European exporters complain about the length of Canada's process for approving new veterinary drugs, delays in processing applications for authorization of food additives, and Canadian standards on the composition of cheeses. Canadian stakeholders, for their part, cite European regulations on beef, which include a ban on growth hormones. They also point to delays in the approval process for genetically modified organisms (GMOs), as well as GMO traceability and labelling requirements.

SENSITIVE ISSUES

The negotiators agreed to address all issues during the negotiations, but there is still significant disagreement over the industries that each party would like to protect. The EU is concerned about GMOs, and about fish and seafood. Massive importation of fish and seafood products from Canada could threaten the European industry. The EU would also like to protect certain agricultural products that are subject to high duties, such as beef and pork products, grains, and processed foods. In many cases, these are export markets that Canada hopes to develop.

The EU is also pressuring Canada to recognize the Union's geographical indications, which, according to some interested parties, such as the Canadian Association of Importers and Exporters, could pose a problem and be detrimental to the food industry because of market share loss that could result from that recognition. A "geographical indication" refers to the name of a region and is used to describe a local agricultural or food product or a manufacturing process from that region.

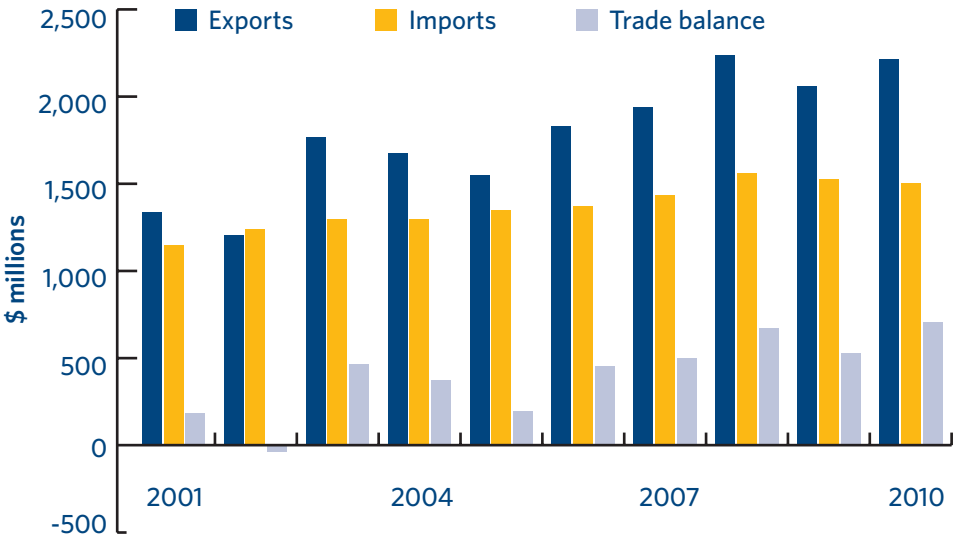
Canada wants to protect its supply management system for poultry, eggs and dairy products by controlling access to the market and imposing prohibitive duties when quotas are exceeded. Canada is also looking for firm commitments from the EU to lower export subsidies. These subsidies currently provide EU producers an unfair advantage over Canadian producers.

Finally, there is still no agreement on the definition of the rules of origin of agri-food products. In the case of animal products, the two parties have to agree whether the origin of a product means the place where the animal was slaughtered or where it was born. Rules of origin based on place of birth would hurt Canadian pork and beef exports, because in North America those sectors are highly integrated and Canada could be required to modify its traceability systems.[4]

WHAT LIES AHEAD

There have been seven rounds of negotiations to date, the last one in April 2011 in Ottawa. During those negotiations, the parties put offers for commodities on the table that would see 90% of tariffs eliminated. However, the remaining 10% includes tariffs on agricultural products. There has yet to be a formal exchange of offers for the sensitive agricultural issues, but the negotiators still hope to reach an agreement before the end of 2011.

Canada's Agri-food Trade Balance with the European Union, 2001–2010



Source: Figure produced by the Library of Parliament using data from Statistics Canada.
(Overall, the trade balance was positive, except in 2002, when there was a $33 million deficit.)

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FOREIGN INVESTMENT IN CANADA: THE NET BENEFIT TEST

Mathieu Frigon

ISSUE | Certain foreign investments are subject to approval by the federal government, which reviews these investments within a regulatory framework.

SYNOPSIS | Under the *Investment Canada Act*, foreign investments are classified into two categories: investments that are subject to notification and investments that are reviewable. For the latter, a foreign investment will be approved by the Government of Canada only if it is likely to be of net benefit to Canada and not injurious to national security.

TIMING | As has been the case in recent years, the review of foreign investments by the Government of Canada under the *Investment Canada Act* will likely be a matter of debate in the new parliament.

Foreign investment can be highly beneficial for the Canadian economy. When a foreign firm purchases a Canadian company, innovative technology and new management ideas may be implemented by the foreign investor, and they can lead to higher productivity and superior competitiveness. At the macroeconomic level, foreign investment can therefore translate into increased exports and employment and, more generally, into a faster-growing Canadian economy.

Foreign investment may also come at a cost in terms of reductions in employment or value-added activities at the firm level. National security and cultural sovereignty could also be affected by a foreign takeover of a Canadian firm, which adds non-economic considerations to reviews of foreign investment.

THE *INVESTMENT CANADA ACT*

The *Investment Canada Act* is the principal mechanism for conducting foreign investment reviews in Canada. It came into force on 30 June 1985. Under the Act, foreign investments are classified into two categories: investments that are subject to notification, and investments that are reviewable.

Foreign investments are deemed reviewable – meaning that they are subject to approval by the federal government – if at least one of the following three scenarios arises:

- Scenario 1: The investor is from a World Trade Organization (WTO) member country and the investment is made to directly acquire ownership and control of a non-cultural Canadian business that has assets over $312 million (in 2011).[1] In the case of non-WTO countries, the threshold is $5 million or more for direct acquisitions and $50 million or more for indirect acquisitions.
- Scenario 2: The investment is made to directly acquire control of a Canadian cultural business that has assets of $5 million or more,[2] *or* the Government of Canada considers that an investment in a cultural business should be reviewed in the public interest.
- Scenario 3: The Government of Canada considers that the investment may be injurious to national security.

Foreign investments under Scenario 1 can be approved only if the minister of Industry is satisfied that the transaction is likely to be of "net benefit" to Canada. Factors that are considered in the net benefit "test" under the Act are:

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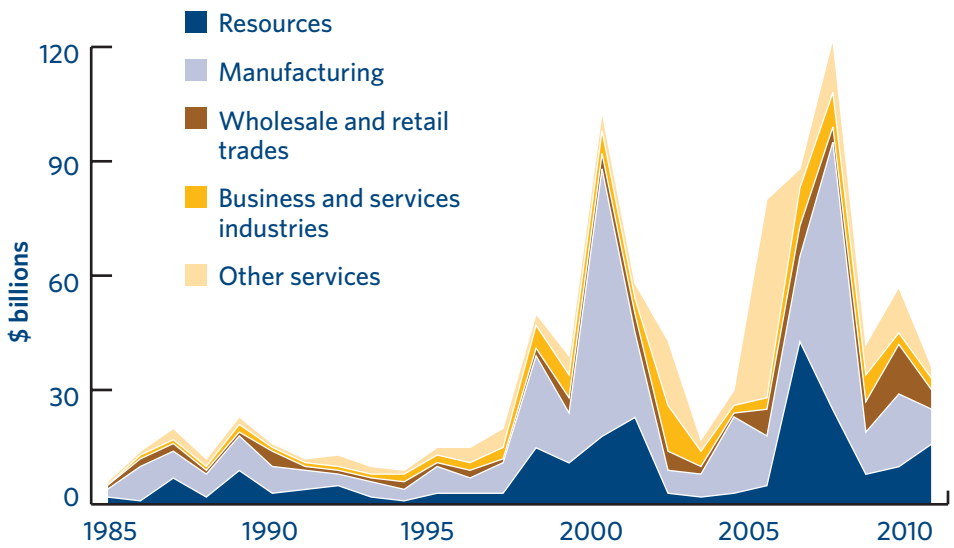
1. the effect of the investment on economic activity in Canada;
2. the degree of participation by Canadians in the business in question;
3. the effect of the investment on productivity, efficiency, technological development, product innovation and product variety in Canada;
4. the effect of the investment on competition;
5. the compatibility of the investment with national industrial, economic and cultural policies; and
6. the contribution to Canada's ability to compete globally.

In making a determination under Scenario 1, the minister consults with provincial governments, other federal departments, and the Competition Bureau. Also, the minister examines in detail the foreign investor's future plans for the Canadian business. The foreign investor may offer legally binding undertakings (e.g., job creation, R&D activities or new investments) to demonstrate "net benefit" to Canada.

The authority to review a foreign investment in a cultural business under Scenario 2 (cultural business) rests with the minister of Canadian Heritage. The net benefit test under this scenario consists of determining whether the investment is compatible with the strategic objectives of the Department of Canadian Heritage.[3]

Finally, there is no definition of "national security" under the Act, or of the elements that can be considered injurious to national security. This provides the government additional flexibility in making its determination under Scenario 3 (national security).

Acquisitions of Canadian Businesses by Foreign Investors, 1985–2010



Source: Figure prepared by the Library of Parliament using data from Industry Canada. ("Business and services industries" includes business, education, health, social services, accommodation, food, beverage and other services industries. "Other services" includes construction, transportation and storage, communication and other utilities, finance and insurance industries and real estate businesses.)

If none of the above scenarios applies, non-Canadians planning to establish a new Canadian business or to acquire control of a Canadian business give notice to the Director of Investments within Industry Canada and provide the required information.

RECENT NOTABLE REVIEWS UNDER THE *INVESTMENT CANADA ACT*

In May 2008, the Government of Canada rejected the proposed takeover of the information system and geospatial businesses of MacDonald, Dettwiler and Associates Ltd. by a U.S.-based company on the grounds that the transaction was not likely to be of net benefit to Canada. This was the first time that a transaction was rejected under the Act.

In November 2010, the Government of Canada sent a notice indicating that it was not satisfied that the proposed takeover of Potash Corporation of Saskatchewan Inc. by BHP Billiton, headquartered in Australia, was likely to be of net benefit to Canada. BHP Billiton subsequently withdrew its application for review under the Act.

In February 2011, the Government of Canada stated that the proposed merger between the Toronto Stock Exchange and the London Stock Exchange will be reviewed under the Act.

ADVANCING CANADA'S DIGITAL SOCIETY

Dillan Theckedath, Terry Thomas

ISSUE | Canada needs to improve wireless and broadband access, penetration and use to compete in the global digital economy.

SYNOPSIS | Recent advances in digital technologies are changing education, medicine, government services, commerce, entertainment and business practices. Improved access to broadband Internet could provide numerous social and economic benefits for Canadians, and may allow Canada to regain its position as a leader in the global digital economy.

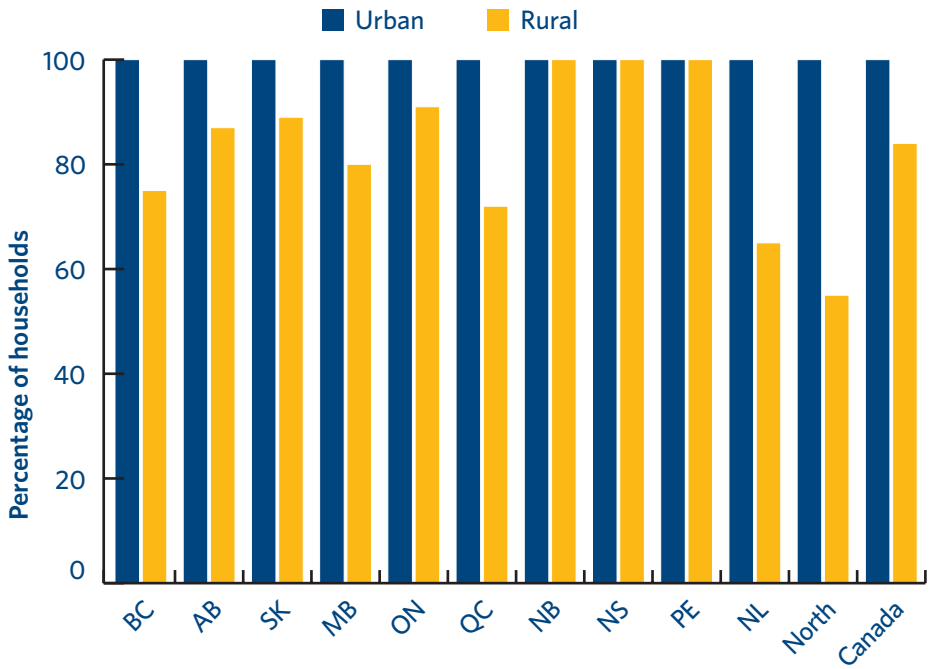
TIMING | Although Canada does not have a national digital strategy, public consultations for developing a federal strategy were held in 2010.

Information and communications technology is reshaping economies and societies around the globe. Recent advances in digital technologies, especially increased Internet speed and capabilities, are changing education, medicine, government services, commerce, entertainment and business practices.

CANADIAN DIGITAL LANDSCAPE

Until recently, Canada was a world leader in telecommunications. Several recent international studies now suggest that Canadians cannot obtain the same speed and service for broadband Internet as subscribers in other developed countries, and they pay higher average monthly subscription prices.[1] The combination of higher price and lower-quality service has led to relatively low penetration rates (the percentage of households with broadband Internet subscriptions), compared with those in other developed countries. In 2009, though broadband was available to 95% of Canadian households, only 62% subscribed to it.[2]

Broadband Availability in Canada: Urban Versus Rural, 2009



Source: Figure prepared by the Library of Parliament using data from Canadian Radio-television and Telecommunications Commission, *Communications Monitoring Report*, July 2010.

In rural and isolated regions, high-speed Internet is not always available or affordable, creating a "digital divide" between rural and urban Canada (see figure). Eliminating this digital divide is important for domestic equity, and it would allow more Canadians to take part in the domestic and international digital economy.

Government infrastructure programs have helped bridge this gulf, as have technological advances in the wireless and satellite delivery of broadband.

DIGITAL ECONOMY AND INNOVATION

A faster, more accessible and competitive digital network could provide significant social and economic benefits for Canadians. Tapping recent advances in information and communications technology could help make Canadian companies more innovative, which would help address Canada's perennial problem of relatively low productivity.[3]

Canada has world-class researchers in academia, government and the private sector. Yet compared with the performance of other countries, Canada's ability to convert scientific research into commercial success continues to pose a challenge.[4] Some Canadian companies do succeed – for example, Research In Motion; MacDonald, Dettwiler and Associates; and DragonWave are internationally recognized for having leveraged advances in information and communications technology to become global powerhouses.

NATIONAL DIGITAL PLANS

Over 20 countries have national digital plans. Estonia, now a world leader in e-government, issued its national plan in 1998. France had a national digital plan in 2008, and the United Kingdom in 2009. The United States presented its national broadband plan in 2010. Although Canada does not have a national digital strategy, public consultations for developing a federal strategy were held in 2010.

The national plans in place differ in detail but share a number of common elements, including a general pledge for universal broadband access, goals for broadband speed, and recognition of the need for digital literacy. Almost all of the plans announce the nation's desire to take a leadership position in the digital economy. The differences among the plans are country-specific, involving geography and population distribution, as well as attitudes toward digital security, intellectual property rights and promotion of national cultural content.

Several groups have argued that the federal government should take a leading role in a digital society and become an active model for Canadians in the use of digital technology. Provincial and territorial governments also have important roles to play in shaping Canada's digital society, particularly as digital technology increasingly enters areas for which they are responsible, such as the delivery of health services and education.

Through various funding efforts, all levels of government in Canada have shown the importance they place on improving Canadians' access to broadband. This expansion may allow Canadians to reap fully the benefits of a 21st century digital society, and it could help Canada to regain its position as a global telecommunications leader.

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CYBERSECURITY AND CYBERCRIME: DEALING WITH A COMPLEX THREAT

Holly Porteous, Dominique Valiquet

ISSUE | Can Canada keep up with the rapidly advancing and complex nature of cybercrime?

SYNOPSIS | Cybersecurity is a complex field involving many aspects of society, both nationally and internationally. This makes fighting cybercrime a major challenge for law enforcement agencies and Parliament alike.

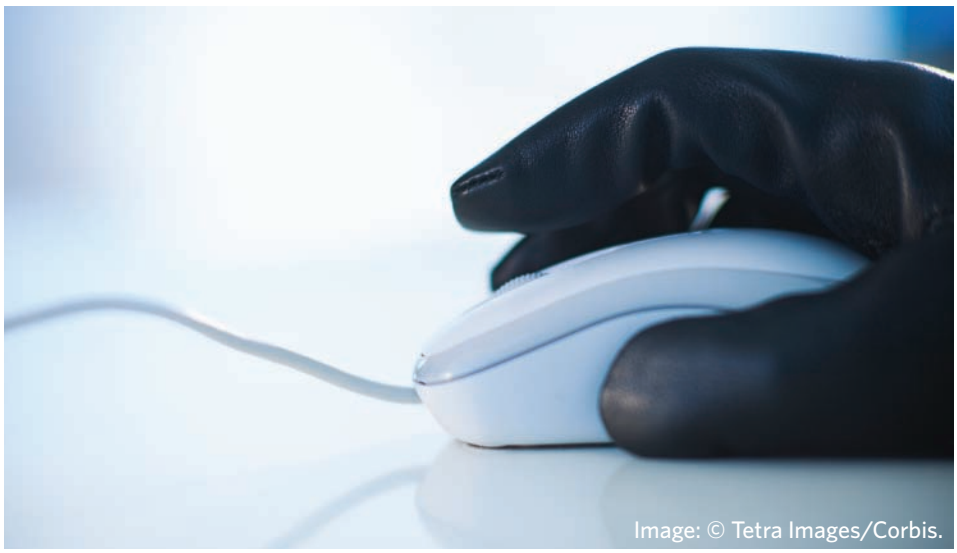
TIMING | Legislation targeting cybercrime died on the *Order Paper* with the dissolution of the 40th Parliament, and it is likely that legislation related to this issue will be tabled during the 1st Session of the 41st Parliament.

Fighting cybercrime means protecting computer networks and data from offences against computers (such as computer piracy and various types of cyberattacks) and more traditional offences committed using a computer (such as fraud and terrorism). Despite some similarities among the various types of cybercrime, government agencies and private enterprise must deal with many different challenges. Parliament must also strike a fair balance between civil liberties and public and economic security.

DEALING WITH CYBERATTACKS

Recent compromises of government and private-sector networks in Canada and abroad, the publication of confidential documents by WikiLeaks, and the launch of *Canada's Cyber Security Strategy* in October 2010 have all highlighted the significance of cybersecurity.[1] While news stories often raise the spectre of a future cyberwar, this may arguably be an incorrect way to frame the issue. Focusing on the military aspect alone tends to exaggerate the "warfighting utility" of cybermeans and thereby obscure the complexity involved in protecting all elements of society – individuals, corporations and the state – from existing cyberthreats.

Legislation in Canada has, on the whole, kept pace with the new technologies that are used in committing certain crimes (child pornography laws being the best example), as well as new offences such as identity theft. Cyberattacks known as "advanced persistent threats" (APTs) are one of the greatest threats to Canada in this regard and pose a formidable challenge for investigation and prosecution.



Sophisticated cybercriminals are prompting law enforcement and national security agencies to seek new tools and authorities.

APTs can originate from a state, a well-resourced criminal organization or both. Unlike ordinary online attacks, they use an array of hacking techniques, some of which may not be available in the public domain. In this way, they quietly and methodically target an organization's computer system over time, defeating that organization's defences through, as their name implies, sheer persistence.

THE IMPORTANCE OF INTELLIGENCE

The inability to obtain cooperation from certain countries and to clearly identify the source of well-planned attacks – in other words, to achieve *definitive attribution* – limits Canada's ability to respond through criminal prosecution or retaliation alone.

Nonetheless, even if it is very difficult to know *who* is behind a cyberattack or other cybercrime, it is possible to discover *which* computer or, more likely, network of computers is implicated in Canada and abroad. While useful for prosecution, this knowledge can also be used to block an ongoing attack. To help identify these computers, law enforcement and intelligence agencies are therefore looking to *Criminal Code* amendments that would provide access to data held by telecommunications service providers.

One example is Bill C-22, passed in the 40th Parliament, which requires Internet service providers to report child pornography. Others are bills C-74, C-51 and C-52 – all three of which died on the *Order Paper* – regarding the modernization of computer networks and the investigation measures needed for the ratification of the *Convention on Cyber-Crime* (signed by Canada in 2001).[2] These bills did not go as far as those adopted in some European countries, which required service providers to keep their data permanently.

To address circumstances where an arrest or prosecution is not possible and critical systems are at stake, intelligence agencies are seeking various legislative amendments, including changes to the *National Defence Act*, to undertake active defence measures. Such measures entail a spectrum of actions of increasing intrusiveness, risk and potential for disruption.

CONCERNS ABOUT PRIVACY

Providing law enforcement and intelligence agencies with the means to investigate, prosecute or actively defend against cybercriminals could raise privacy concerns among Canadians. Moreover, any increased role for telecommunications service providers in investigations could make them look like "government agents."

Finally, some observers have argued that privacy in cyberspace is being eroded. Recent draft legislation in Canada, based on the interpretation of the Convention, does in fact relax the legal threshold – from reasonable *belief* to reasonable *doubt* – for obtaining certain warrants pertaining to electronic data. Police officers would also have access to certain personal information of Internet users without prior court permission.

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THE BROADCASTING LANDSCAPE IN CANADA

Michael Dewing, Marion Ménard

ISSUE | Rapid technological and structural changes are affecting the broadcasting landscape in Canada.

SYNOPSIS | The technological and structural changes affecting the broadcasting landscape pose a number of regulatory challenges for the industry and for the regulator.

TIMING | The transition to digital television takes place in August 2011, and the CRTC licence-renewal hearings took place in the spring and will continue in the fall. There are no firm dates for the release of the CRTC findings on vertical integration or the Supreme Court hearing on whether Internet service providers are broadcasters.

The broadcasting landscape in Canada is undergoing rapid technological and structural change, with broadcasting content increasingly available via the Internet and wireless devices. As a consequence, Canadians now spend more time on the Internet than watching television (see figure).

Current concerns include the transition to digital television, the impact of corporate consolidation and vertical integration, the role of Internet service providers, and the renewal of television broadcasting licences. These issues are placing new pressures on the existing regulatory framework that industry stakeholders and the Canadian Radio-television and Telecommunications Commission (CRTC) are attempting to address.

THE TRANSITION TO DIGITAL TELEVISION

The CRTC has ruled that over-the-air television stations must convert their transmitters from analog to digital by 31 August 2011 in locations that are:

- national and provincial capital cities;
- areas with a population over 300,000; or
- other areas where there is more than one local television station.

Stations in other areas may also switch to digital, and some will be affected when broadcasting on channels 52 to 69 ceases.

The transition to digital over-the-air broadcasting will affect consumers who receive their television signals with an antenna and do not have a television set with a digital tuner. To continue receiving over-the-air television, they will require a converter box or a television with a digital tuner. Consumers who receive their television signals by cable, by satellite or over the Internet will not be affected by the transition. (Detailed information regarding this transition can be found on the Department of Canadian Heritage website.)

THE IMPACT OF VERTICAL INTEGRATION

Since 2001, corporate consolidations have brought about vertical integration in the broadcasting industry. Vertical integration means that a single entity owns programming and distribution companies or programming companies and production firms.

Notable consolidations include the acquisition of TVA by Quebecor Média, five Citytv stations by Rogers Media, Canwest Global by Shaw Communications, and CTVglobemedia by BCE.

Vertical integration has advantages, such as cost reduction, but it carries the risk that the integrated companies will favour firms within their own group. To address this issue, the CRTC initiated public consultations in the spring of 2011 to review its regulatory framework relating to vertical integration.[1]

THE ROLE OF INTERNET SERVICE PROVIDERS

Broadcasting content delivered over the Internet – including movies and television programs – is exempt from regulation by the CRTC. The question of whether Internet service providers (ISPs) are "broadcasting undertakings" under the *Broadcasting Act* (which governs the broadcasting system and includes a broadcasting policy) is controversial. While ISPs argue that they provide a content-neutral service, cultural groups maintain that they operate as broadcasting undertakings and as such should be subject to the Act. Such groups also insist that ISPs should contribute to a fund to support the creation of Canadian content.

In 2009, the CRTC referred the matter to the Federal Court of Appeal. In 2010, the Court ruled that while ISPs provide access to broadcasting, as content-neutral service providers they do not carry on as broadcasting undertakings.[2]

In March 2011, the Supreme Court of Canada announced it would hear an appeal of the judgment.

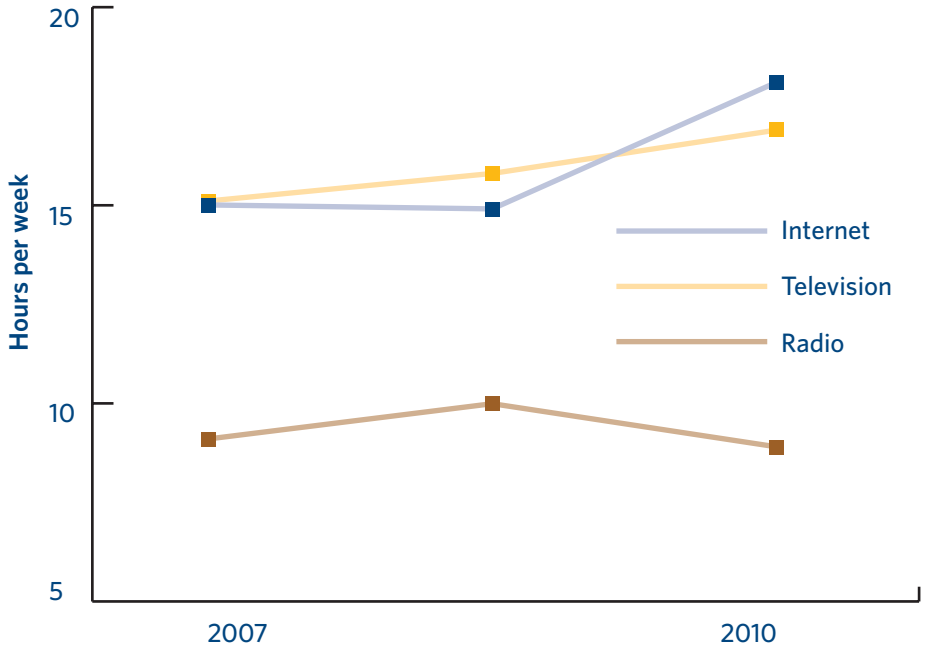
RENEWAL OF TELEVISION BROADCASTING LICENCES

With increased corporate consolidation, the CRTC decided in 2010 to take a group-based approach to reviewing the licensing of large private television ownership groups that operate conventional and specialty services. In the past, these services were considered individually, and the objective of the new approach is to provide the ownership groups with greater flexibility in allocating resources between their various services.

The CRTC held licence-renewal hearings for English-language groups in April. Hearings for French-language groups and CBC/Radio-Canada will take place in the fall.

While the group-based approach would not apply to CBC/Radio-Canada, the CRTC will consider whether any elements of this approach are applicable to the public broadcaster. For CBC/Radio-Canada, the licence-renewal process will provide an opportunity to discuss key issues, such as local and regional programming. The broadcaster will work with the CRTC to achieve licence terms and conditions acceptable to both.[3]

Canadians' Internet Usage Compared with Television and Radio Usage, 2007–2010



Source: Figure prepared by the Library of Parliament using data from Ipsos Reid, 22 March 2010.

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NUCLEAR ENERGY: CHALLENGES AND OPPORTUNITIES

Jean-Luc Bourdages, Mohamed Zakzouk

ISSUE | Challenges and opportunities face the nuclear energy industry in Canada and around the world.

SYNOPSIS | The rising global demand for energy and concerns over climate change are contributing to a possible global "nuclear renaissance." However, the nuclear industry, particularly in Canada, faces a number of economic, safety and environmental challenges.

TIMING | The federal government will soon have to make major decisions concerning its nuclear energy sector, including the partial privatization of AECL, the construction of new reactors, the reintroduction of a new *Nuclear Liability Act* and the future supply of medical isotopes.

The nuclear sector is growing around the world as demand for energy increases. Canada, with its involvement in many aspects of the nuclear industry, will soon need to make major decisions concerning its nuclear sector to respond to this demand, both at home and abroad.

CANADA'S NUCLEAR INDUSTRY

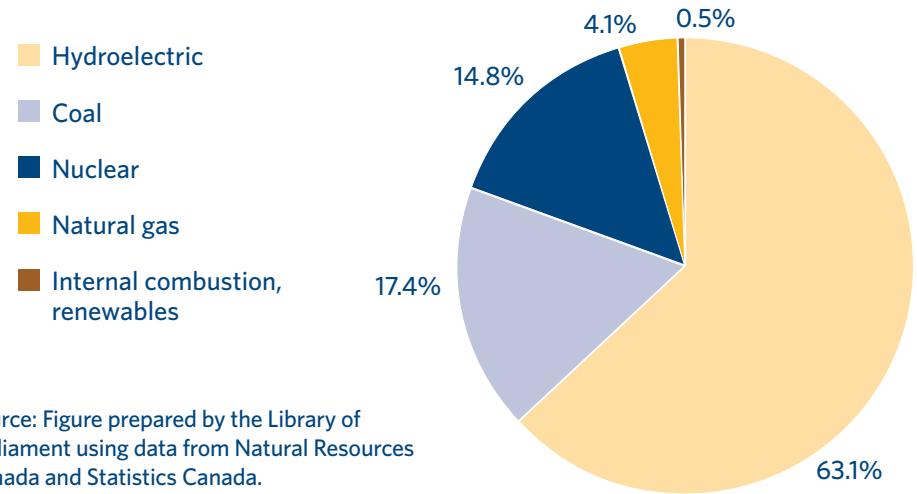
Nuclear energy accounts for about 15% of electricity production in Canada and 55% of production in Ontario. The industry employs over 20,000 employees directly and 10,000 indirectly. Its main activities include uranium milling, mining and processing; the design and operation of nuclear power plants and facilities; electricity production; and isotope production for nuclear medicine. Nuclear scientific facilities in Canada contribute as well to research and development in the aerospace, automotive, manufacturing and engineering sectors.

Canada is also a leading producer of uranium fuel for nuclear power generation around the world. Saskatchewan has the world's largest known high-grade natural uranium deposits and accounts for about 21% of the total global production of natural uranium.

Canada has 22 reactors (18 currently in service), 20 of which are located in three nuclear generating facilities in Ontario: Darlington Nuclear, Pickering Nuclear, and Bruce Power. The remaining two reactors are in Point Lepreau, New Brunswick, and Gentilly, Quebec. Ontario Power Generation is contemplating building four new reactors at the Darlington Nuclear Generating Station, increasing the province's total potential output of electricity by 4,800 megawatts. Public hearings for the first two proposed reactors began in Toronto in March 2011 as part of the project's environmental assessment.

In November 2007, the Government of Canada indicated that it was considering restructuring Atomic Energy of Canada Limited (AECL), a Crown corporation that provides nuclear technology and services.[1] By May 2009, a review team had

Sources of Electricity Production in Canada, 2009



Source: Figure prepared by the Library of Parliament using data from Natural Resources Canada and Statistics Canada.

concluded that AECL should separate its commercial business activities – the CANDU Reactor Division – from its research and technology activities. The government therefore invited private investors to submit proposals to acquire the Reactor Division.

RISING GLOBAL DEMAND FOR ENERGY: A "NUCLEAR RENAISSANCE"?

Key in any decision-making process regarding the development of nuclear energy is the worldwide demand for energy, which is expected to grow in the next 25 years. With it, nuclear power generation will grow.

As of April 2011, there were 439 nuclear power plants in operation in 30 countries, accounting for 14% of the global supply of electricity. According to one scenario, global energy consumption is projected to increase by 49% over the next quarter century, from 522 exajoules (EJ) in 2007 to 779 EJ in 2035.[2] Under the same scenario, electricity generation from nuclear power worldwide would increase by 73%, from 9.36 EJ in 2007 to 16.2 EJ in 2035.

Currently, 61 nuclear reactors are under construction around the world. According to the World Nuclear Association, an additional 158 reactors are in the planning stages and a further 326 have been proposed.[3] China, India and Russia are expected to have the strongest demand for new energy supply, making them potential markets for new reactors.[4]

The growing interest in nuclear energy is also influenced by the role it might play in climate-change-reducing efforts, since nuclear technology produces fewer greenhouse gas emissions than fossil-fuel-based plants.

CHALLENGES FOR THE INDUSTRY

The opportunity for growth in the nuclear power generation industry is offset by a number of major challenges faced by Canada and other countries around the world:

- economic, technical and regulatory issues in building and refurbishing nuclear reactors;
- environmental and health risks associated with radioactive material, especially long-term waste management;
- concerns regarding nuclear safety and liability;
- the maintenance of research and development capacity in the nuclear sector, including the availability of the required expertise and skilled workforce; and
- public perception and acceptability of nuclear technologies.

These challenges have become more daunting following the recent crisis at the Fukushima nuclear plant in Japan, resulting from the 2011 earthquakes and tsunami, as well as due to heightened concerns regarding nuclear safety around the world.

The Canadian Nuclear Safety Commission has ordered all operators of nuclear plants to conduct a general inspection of their facilities, with special attention to external hazards. Several other countries, especially in Europe, are also reviewing safety aspects of their nuclear facilities.

These and other issues will present challenges for the Canadian and worldwide nuclear industries in the coming years.

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CLIMATE CHANGE NEGOTIATIONS COMING DOWN TO THE WIRE

Tim Williams

ISSUE | Climate change is a global issue requiring multilateral negotiations to ensure cooperative action to reduce emissions and adapt to change.

SYNOPSIS | A rift between developed and developing nations has dominated negotiations under the United Nations Framework Convention on Climate Change. Developed nations have committed to lead efforts, but developing nations feel that the leadership has been lacking.

TIMING | Pressure on climate change negotiations is growing as the end of the 2012 Kyoto period approaches without a successor agreement. It is also believed that greenhouse gas emissions must peak soon if dangerous climate change is to be averted. The next UNFCCC plenary begins in November 2011 in Durban, South Africa.

Climate change has been the world's foremost environmental issue for over 25 years. Efforts to address this issue have been largely driven by international negotiations under the United Nations Framework Convention on Climate Change (UNFCCC), finalized at the 1992 Rio Earth Summit.

Signed by 194 countries and the European Union, the UNFCCC's goal is to prevent dangerous human interference with the climate system.

THE HISTORY OF UNFCCC NEGOTIATIONS

The UNFCCC's Conference of the Parties (COP) generally meets yearly. In 2010, COP 16 was held in Cancun, Mexico, and COP 17 is to be held in November and December 2011 in Durban, South Africa. The COP has covered such issues as funding and capacity building in the developing world, technology transfers and, most importantly, setting reduction targets for greenhouse gas emissions. Significant milestones include:

- COP 7 (1997): *Kyoto Protocol* – The Kyoto Protocol bound industrialized parties to reduce their emissions to 5.2% below 1990 levels on average during its first commitment period, 2008 to 2012.
- COP 13 (2007): *Bali Road Map* – The *Bali Road Map* consisted of two separate tracks: one to examine a second commitment period under the Kyoto Protocol and the other, guided by the *Bali Action Plan*, to increase the effectiveness of long-term cooperation under the UNFCCC.
- COP 15 (2009): *Copenhagen Accord* – Toward the end of COP 15, informal negotiations among a select group of heads of state led to the *Copenhagen Accord*, which included voluntary emissions-reduction commitments. The Accord was not agreed to at the plenary, and the multilateral process was put at risk as a result of a perceived lack of transparency. The most important aspect of the Accord was its inclusion of large emitters such as China and the United States.

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Top Emitters Ranked by Total and Per Capita Emissions, 2009

CARBON DIOXIDE EMISSIONS			
(million tonnes)		*(tonnes/person)*	
China	8,060	United States	17.2
United States	5,310	**Canada**	**16.3**
India	**1,670**	South Korea	11.5
Russian Federation	1,570	Russian Federation	11.2
Japan	1,180	Germany	9.3
Germany	770	Japan	9.2
Iran	570	Iran	7.7
South Korea	560	China	6.1
Canada	**540**	**India**	**1.4**

Source: J. G. J. Olivier and J. A. H. W. Peters, *No growth in total global CO_2 emissions in 2009*, Netherlands Environmental Assessment Agency (PBL), Bilthoven, The Netherlands, June 2010.
(The contrasting characteristics of developed and developing countries [e. g., Canada, India] are highlighted.)

CURRENT STATE OF NEGOTIATIONS

Negotiations continue along the two-track *Bali Road Map*, while many aspects of the *Copenhagen Accord* were agreed to by COP 16 under the UNFCCC track.

Developing countries want the two tracks to remain distinct and independent, with developed nations taking on new Kyoto commitments. But three developed nations – Japan, Russia and the United States – have stated that they will remain outside any new Kyoto agreement, though they remain part of the negotiations. Canada supports a single binding agreement that includes all major emitters. The European Union may consider a second commitment period under the Protocol, as part of a global framework that includes all major economies.[1]

The *Bali Action Plan* has guided the UNFCCC track, focusing on:

- a shared vision for long-term cooperative action (including a long-term global temperature target);
- mitigation of climate change, including measurable, reportable and verifiable national targets;
- enhanced action on adaptation, including financial needs assessments and capacity-building; and
- enhanced action on technology development and transfer, and provision of financial resources and investment.[2]

Some aspects of the *Bali Action Plan* were addressed at COP 16 in 2010. For instance, the parties formally recognized the need to hold the increase in global average temperature below two degrees Celsius above pre-industrial levels. However, other aspects of the *Bali Action Plan* received less attention. Recent negotiations saw developing countries re-emphasizing the *Bali Action Plan* over the COP 16 agreements, especially regarding enhanced action on adaptation and finance measures.[3]

EXPECTATIONS FOR DURBAN

It is understood that the commitments made under the *Copenhagen Accord* are insufficient to meet the two degrees Celsius goal.[4] Canada's target is to reduce emissions to 17% of 2005 levels by 2020, "to be aligned with the … target of the United States in enacted legislation" – which currently does not exist and is unlikely to in the foreseeable future.

Negotiations toward more ambitious targets are driven by the recognition that developed countries are responsible for the increase in atmospheric greenhouse gases since the industrial revolution, have high per capita emissions and are wealthy. Developed nations have committed to lead, but developing nations do not believe that leadership has been demonstrated. Meanwhile, developed nations insist that all large emitters, including China and India, reduce their emissions to meet the UNFCCC's ultimate goal. The COP 17 meetings in Durban are unlikely to conclude with a new agreement. Without new binding targets before 2013 to drive demand, much of the value of current efforts in the developing world will be reduced.

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The Use of Governor General Special Warrants During an Election Period
pp. 10–11

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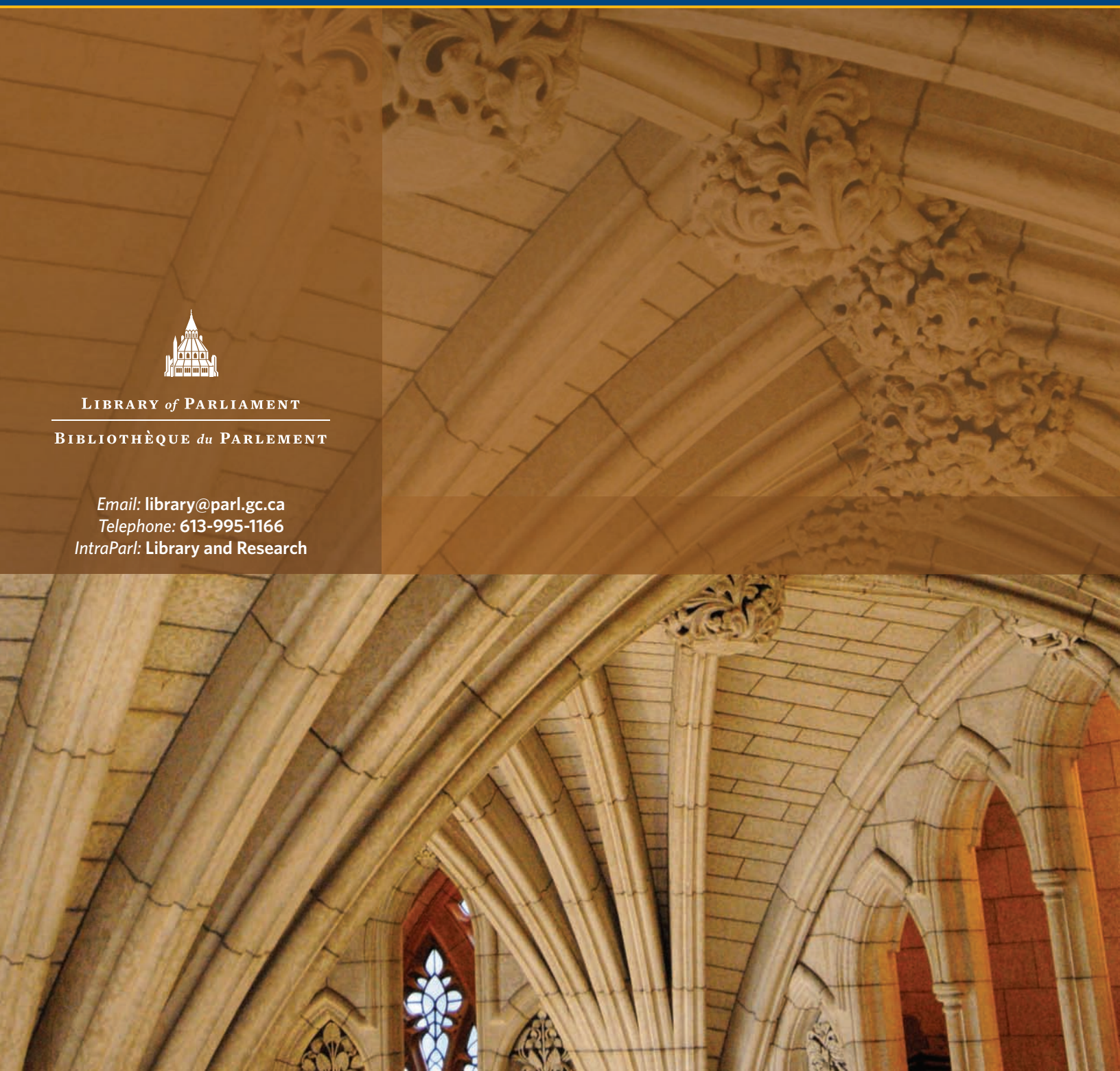

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